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*Jami Edwards
11th Grade*

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THE ATTORNEY GENERAL

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Requests for Opinions, Opinions, Open Records Decisions.

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the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Opinions

Opinion No. GA-0517

The Honorable Frank J. Corte Jr.

Chair, Committee on Defense Affairs and State-Federal Relations

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Application of the Public Information Act to private entities exercising eminent domain powers under Senate Bill 7; application of Senate Bill 7 to common carriers (RQ-0455-GA)

SUMMARY

Under section 552.0037 of the Public Information Act (the "PIA"), an entity that has eminent domain powers but is not a governmental body is generally subject to the PIA in the same manner as a governmental body with respect to certain information. An entity described in section 552.0037 is authorized to establish and follow record retention policies that are consistent with applicable law. The PIA's provisions for the assessment of litigation costs and attorney fees generally apply with respect to the eminent domain information of an entity described in section 552.0037. It is likely, however, that the PIA's criminal provision prohibiting the denial of access to public information cannot be applied constitutionally in the context of section 552.0037 information. Section 552.0037 makes information subject to the PIA only if the information is related to the taking of private property within the State of Texas.

A common carrier must be a corporation for its operations to qualify for the exception in subsection 2206.001(c)(7)(A) of the Government Code. The form of business organization does not determine whether the operations of a common carrier qualifies for the exception in subsection 2206.001(c)(7)(B) of the Government Code.

Opinion No. GA-0518

The Honorable Mike Stafford

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Whether delinquent property taxes not reduced to judgment constitute indebtedness under sections 154.045 and 262.0276 of the Local Government Code (RQ-0516-GA)

SUMMARY

Under section 154.045 of the Local Government Code, delinquent taxes that have not been reduced to judgment are not "debt" that precludes a county from disbursing funds to a person indebted to the county. For purposes of section 262.0276 of the Local Government Code, a person "indebted to the county" includes a person who owes the county delinquent taxes, regardless of whether the taxes have been reduced to judgment. Whether a particular obligation other than delinquent taxes is "debt" under section 154.045 or 262.0276 without reducing it to judgment depends on the nature of the obligation.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200700675

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: February 21, 2007

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER E. DIRECTION OF AFFAIRS

7 TAC §91.501

The Credit Union Commission proposes amendments to Subchapter E, concerning direction of affairs, §91.501, concerning eligibility to hold office. The proposed amendments to §91.501 change the title of the section to "Director Eligibility and Disqualification"; clarify eligibility requirements for serving on the Board of Directors; empower a credit union to develop its own standard application for candidates seeking or appointed to director positions; direct each credit union to establish continuing education requirements for its directors; and delineate conduct that is prohibited for persons serving on the Board.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 18, 2007 at 9:00 am at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §122.054, which directs the commission to establish qualifications for a director.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.054.

§91.501. Director Eligibility and Disqualification ~~[Eligibility to Hold Office]~~.

(a) (No change.)

(b) Qualifications. No member may be elected to or serve on the board of directors if that member:

(1) - (3) (No change.)

(4) has defaulted on payment of a voluntary obligation to the credit union or has otherwise caused the credit union to suffer a financial loss;

(5) (No change.)

(6) has been personally made subject to an operating directive for cause while serving as an officer, director, or senior executive management person of a financial institution; or has caused or participated in a prohibited activity or an unsafe or unsound condition at a financial institution which resulted in the suspension or revocation of the financial institution's certificate of incorporation, or authority or license to do business;[-]

(7) has failed to complete and return a director application;

or

(8) refuses to take and subscribe to the prescribed oath or affirmation of office.

(c) Director application. Any member nominated for, or seeking election to, the board of directors shall submit a written application in such form as the credit union ~~[commissioner]~~ may prescribe; ~~together with any additional information the credit union may request~~. The application shall be submitted either to the nominating committee prior to ~~[the determination by the committee of]~~ its selection of nominees; or to the board chair within 30 days following the election of a member who was not nominated by the nominating committee or who was appointed by the board to fill a vacancy. The applications of the elected/appointed directors shall be incorporated into and made part of the minutes of the first board meeting following the election/appointment of those directors. Applications of unsuccessful candidates ~~[nominees]~~ shall be destroyed or returned ~~[to the nominee]~~ upon request.

(d) Director education. Directors must develop and maintain a fundamental, ongoing knowledge of the regulations and issues affecting credit union operations to assure a safe and sound institution. A credit union shall ~~[may]~~, by written board policy, establish appropriate education requirements and provide sufficient resources for elected officials to achieve and maintain professional competence ~~[continuing education requirements for directors]~~. The purpose of such policy should be to ensure that every director pursues a plan of education throughout his/her tenure on the board in order to remain current on the law and other issues effecting the credit union in the rapidly changing financial services industry]. The policy should be appropriate to

the size and financial condition of the credit union and the nature and scope of its operations.

(e) Prohibited conduct. A director shall not: [Disqualification of director: The failure of an elected/appointed director to complete and return the application or the failure to take the prescribed oath of office shall disqualify the director designate from holding office.]

(1) Divulge or make use of, except in the performance of office duties, any fact, information, or document not generally available to the membership that is acquired by virtue of serving on the board of the credit union.

(2) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, or any person residing in the director's household.

(3) Accept, directly or indirectly, any gift, fee, or other present that is offered or could be reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of the credit union.

(f) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700508

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 837-9236



7 TAC §91.502

The Credit Union Commission proposes amendments to §91.502 concerning director fees and expenses. The proposed amendments define more specifically the limitations on the payment of fees to directors or committee members, clarify that fees may be paid to committee members also, and add a new subsection for providing insurance to directors or committee members.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, has determined that, for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that, for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar,

General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 18, 2007 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code, §122.062, which limits the compensation a director may receive for services.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.062.

§91.502. Director/Committee Member Fees, Insurance, [and] Reimbursable Expenses, and Other Authorized Expenditures.

(a) (No change.)

(b) Payment of fees. A credit union may, by written board policy, authorize the payment of reasonable fees for directors and/or committee members attending duly called meetings for the conduct of appropriate credit union business. In addition to the limitations of this section, the [The] policy shall include a schedule of meeting fee amounts and a provision that fees may be paid only for actual attendance at duly called meetings. The authority to pay any such fee is subject to the following limitations:

(1) (No change.)

(2) the credit union must not be subject to a cease and desist order or removal order issued under Finance Code §122.257 and §122.258 [under supervisory sanctions imposed by the commissioner pursuant to the Act or commission rule];

(3) - (4) (No change.)

(c) (No change.)

(d) Insurance. A credit union may, in accordance with written board policy, provide health, life, accident, liability, or similar personal insurance protection for directors and committee members. The kind and amount of these insurance protections must be reasonable given the credit union's size, financial condition, and the duties of the director or committee member. The insurance protection must cease upon the director or committee member's leaving office, without providing residual benefits beyond those earned during the individual's term on the board or committee.

(e) [~~(d)~~] Review by board. A credit union shall implement and maintain controls and other safeguards to prevent the payment of fees or expenses that are excessive or that could lead to material financial loss to the institution. At least annually, the board, in good faith, shall review the director/committee member fees and director/committee member-related expenses incurred, paid or reimbursed by the credit union [as authorized by this section] and determine whether its policy continues to be in the best interest of the credit union. Fees and expenses shall be considered excessive when amounts paid are disproportionate to the services performed by a director or committee member, or unreasonable considering the financial condition of the institution and similar practices at credit unions of a comparable asset size, geographic location, and/or operational complexity.

(f) [~~(e)~~] Waiver by commissioner. The commissioner in the exercise of discretion may grant a waiver in writing of the limitations described in subsection (b) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700510

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 837-9236



7 TAC §91.510

The Credit Union Commission proposes amendments to §91.510 concerning fidelity bond and insurance requirements. The amendments remove the minimum coverage and maximum deductible requirements and place responsibility for determining those amounts on the credit union's management and board of directors. The amendments also make clear that failure to comply with NCUA's fidelity bond requirements could be deemed an unsafe practice under Finance Code §122.255.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 18, 2007 at 9:00 am at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §122.063, which requires a credit union to provide surety or security bonds for directors, officers, and employees.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.063.

§91.510. *Bond and Insurance Requirements.*

(a) Fidelity bond. Each credit union shall purchase and maintain a blanket fidelity bond covering the officers, directors, employees, committee members, and its agents, against loss caused by dishonesty, burglary, robbery, larceny, theft, holdup, forgery or alteration of instruments, misplacement or mysterious disappearance. All carriers writing credit union blanket bonds must be authorized by the Insurance Com-

missioner for the state of Texas as an acceptable fidelity on bonds in this state.

(1) The amount of coverage to be required for each credit union shall be determined by the credit union's management [~~board of directors~~], based on its assessment of the level that would be safe and sound in view of the credit union's potential exposure to risk; provided, such determination shall be subject to approval by the credit union's board of directors. [~~In making its determination the board shall be guided by the following minimum required amount of fidelity bond coverage for any single loss computed according to asset categories:~~] [Figure: 7 TAC §91.510(a)(1)]

(2) Each credit union may maintain bond coverage in addition to that provided by the insurance underwriter industry's standard forms, through the use of endorsements, riders, or other forms of supplemental coverage, if, in the judgment of the credit union's board of directors, additional coverage is warranted [~~Any aggregate limit of liability provided for in a fidelity bond policy must be at least twice the single limit of liability. This requirement does not apply to optional insurance coverage.~~].

[(3) The following maximum amounts of blanket bond deductibles are authorized according to asset categories:] [Figure: 7 TAC §91.510(a)(3)]

[(4) A deductible may be applied separately to one or more insuring clauses in a blanket bond. No deductible will exceed ten percent of a credit union's unencumbered reserves and undivided earnings unless the credit union creates a segregated Contingency Reserve for the amount of the excess. Valuation allowance accounts, e.g., allowance for loan losses, may not be considered part of the unencumbered reserves and undivided earnings when determining the maximum deductible.]

(3) [(5)] The commissioner may require additional coverage of any credit union when, in his opinion, the fidelity bond in force is insufficient to provide adequate fidelity coverage. It shall be the duty of the board of directors to obtain the additional coverage within 30 days after the date of written notice of the findings by the commissioner.

[(6) After the effective date of this section, any bond coverage purchased or renewed by any credit union shall conform to this section.]

(b) - (e) (No change.)

(f) Insuring organization's bond requirements. A [As applicable, a] credit union shall also comply with all bond requirements imposed by an insuring organization as a condition to maintain insurance on share and deposit accounts. [, including,] Any credit union that fails to meet the minimum fidelity bond specifications contained within Part 741.201 of the NCUA Rules and Regulations may be deemed to engaged in an unsafe practice pursuant to Finance Code §122.255.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700509

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 837-9236

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7 TAC §91.516

The Credit Union Commission proposes amendments to §91.516 concerning audits and verifications. The proposed amendments clarify the timing and conditions of audits of credit unions. The amendments also provide that the commissioner can require a credit union to obtain a verification of members' accounts under certain conditions and narrows the conditions under which the commissioner can require an opinion audit.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, has determined that, for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that, for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 18, 2007 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code, §122.102, which requires credit unions to observe accounting principles prescribed by the commission and authorizes the commission to adopt a rule requiring verification of members' accounts.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.102.

§91.516. Audits and Verifications.

(a) Audit requirements. At least once every calendar year, the ~~[The]~~ board of directors shall obtain or cause to be performed an ~~[an-~~ audit of the credit union which must cover the period elapsed since the last audit period. The audit must be conducted in accordance with generally accepted auditing standards by a licensee of the Texas State Board of Public Accountancy or as permitted under the provisions of part 715 of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 715).

(b) - (c) (No change.)

(d) Remedies. The commissioner may compel a credit union to obtain an audit and/or a verification of members' accounts, performed by an independent person, for any year in which any of the following three conditions is present:

(1) the credit union has not obtained an annual audit or caused an audit/verification to be performed;

(2) the credit union has obtained an audit/verification or performed an audit/verification which does not meet the specified requirements; or

(3) (No change.)

(e) Opinion audit required. The commissioner may compel a credit union to obtain an opinion audit performed in accordance with Generally Accepted Auditing Standards by an independent person who is licensed by the state for any year in which the credit union has experienced ~~[serious and]~~ persistent serious recordkeeping deficiencies. The objective of such an audit is to obtain an unqualified opinion on the credit union's financial statements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700511

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 837-9236

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SUBCHAPTER F. ACCOUNTS AND SERVICES

7 TAC §91.610

The Credit Union Commission proposes amendments to §91.610 concerning safe deposit box facilities. The amendments remove duplicate language and make grammatical and technical corrections to the language of the rule.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 18, 2007 at 9:00 am at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §125.508.

The specific section affected by the proposed amended rule is Texas Finance Code, §125.508.

§91.610. Safe Deposit Box Facilities.

(a) Purpose. Finance Code §59.110 requires credit unions to imprint keys issued to safe deposit boxes with the institution's routing number. In addition, it requires a report to the Department [~~department~~] of Public Safety [~~public safety~~] if the routing number is altered or defaced so that the correct routing number is illegible. The purpose of this section is to clarify the requirements of the noted section of the Finance Code.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Routing number - The [~~routing and transit~~] number printed on the face of a share draft or check in fractional form or in nine-digit form that identifies a paying financial institution. [issued to the credit union under the auspices of the American Bankers Association and as listed in the American Bankers Association's "Key to Routing Numbers."]

(c) Imprinting requirements. A credit union which has been issued a routing number shall imprint that routing number on safe deposit box keys on either the head of the key or the shank of the key if there is adequate room. The typical locations to be used are indicated in the following instructions and diagram. The imprint can be made anywhere on the key that has the required space available. [~~It can be either on the head or on the shank of the key.~~] When positioning the die on the key, be careful to place the die on the key where it will imprint on a flat surface and not in the area of the key cuts or on any of the shank ridges or grooves. Imprinting in these areas may interfere with the proper working of the key in the lock and may cause damage. In the event these standard areas for the location of the imprint are unavailable, either because of grooves on the key shank or the fact that the head of the key already has names and other numbers imprinted on it, then the credit union may attach to the key a tag imprinted with the routing number. The tag used must be of such a nature as to be secure. Thus, a paper or cardboard tag or a tag affixed with string will not be acceptable. However, any other medium such as plastic or metal which can retain an imprint of a number shall be acceptable. The tag may be attached in any way to assure its affixation to the key. Typically, this will mean inserting the tag or a device to affix the tag through the hole in the head of the key normally used for placing keys on key chains. The tag method shall not be used if there is adequate room on the key itself for imprinting the numbers. There are four standard areas for the location of the imprinted routing number. These include: the head of the key, the shank of the key, and either place on the reverse side of the key. The standard imprint areas are shown as follows.
Figure: 7 TAC §91.610(c) (No change.)

(d) Branch designation. A credit union may, but is not required to, add a three-digit branch designation to its routing number. Thus, the main credit union facility should receive the designation "001" and branch facilities should receive numbers consecutively beginning with "002" with successive numbers as needed. However, the credit union may control the branch numbering system used provided that the credit union maintains [~~must maintain~~] a master list of branch designations used for this purpose. The master list should be maintained at the main office of the credit union and shall include the [~~following information:~~] three-digit branch designation and address of facility. The credit union then may imprint safe deposit box keys or tags with the routing number plus three-digit branch designation for full identification of the facility.

(e) Report of defaced or altered key. Within 10 days after an officer or employee of a credit union observes that a key used to access a safe deposit box has had the routing number altered or defaced or the tag removed, a report shall be prepared of such incident. The report

shall be on a form promulgated by the Credit Union Department in the form of the attached Exhibit A. The report should be submitted to the Department of Public Safety, Attention [~~attention~~]: Criminal Law Enforcement, Box 4087, Austin, Texas 78773-0001. The report should be mailed no later than ten days after the incident. The credit union should retain one copy of the incident report for a period of three years. Nothing in this rule nor in the Finance Code §59.110 [~~Aet~~] shall require a credit union to inspect routing numbers imprinted on a key or an attached tag to determine if the number has been altered or defaced.

(f) Effective date; applicability to existing keys. A credit union must imprint all safe deposit box keys on or after September 1, 1992. Additionally, the [~~Credit unions may begin imprinting keys prior to that date. The~~] imprinting requirement applies [~~shall apply to all keys currently outstanding as well as~~] to all keys issued prior to [~~after~~] September 1, 1992. However, keys for boxes rented prior to September 1, 1992, need not be imprinted with the routing number unless and until a member presents a safe deposit box key at a credit union for access to a box. Nothing in this rule or the Finance Code §59.110 [~~Aet~~] shall be construed to require a credit union to provide notice to its safe deposit box users or to otherwise require such members to present their keys for imprinting. However, on the first date after September 1, 1992, that a member presents a key which has not been imprinted, the credit union shall imprint the key with the routing numbers as required by Finance Code §59.110.

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700512

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 837-9236

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**CHAPTER 95. SHARE AND DEPOSITOR
INSURANCE PROTECTION
SUBCHAPTER A. INSURANCE
REQUIREMENTS**

7 TAC §95.110

The Credit Union Commission proposes new §95.110 concerning enforcement, penalty and appeal. The new rule addresses the actions the commissioner may take in the event the commissioner determines an insuring organization is operating in an unsafe or unsound matter or violating any applicable laws or regulations.

The new rule is proposed as a result of the Department's general rule review and in response to comments from the Texas Department of Insurance.

Betsy Loar, General Counsel, has determined that for the first five year period the new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the new rule. There is no economic cost anticipated to credit unions or individuals for complying with the new rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 18, 2007 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The new rule is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §15.404, which authorizes the commissioner to administer and enforce the statutes and rules, §122.257 which permits the commissioner to issue a cease and desist order and §122.260, which authorizes the commissioner to assess administrative penalties.

The specific sections affected by the proposed rule are Texas Finance Code, §§15.404, 122.257, and 122.260.

§95.110. Enforcement; Penalty; and Appeal.

(a) The commissioner may issue a cease and desist order, generally in accordance with Finance Code §122.257(b)(c)(d) and (e), to an officer, employee, director, and/or the insuring organization itself, if the commissioner determines from examination or other credible evidence that the insuring organization has or is operating in an unsafe or unsound manner, or violated or is violating any applicable Texas law or rule of the commission, including causing a credit union to operate in an unsafe or unsound condition as defined by Finance Code §21.002(11)(C). If the insuring organization does not comply with the order, the commissioner may assess an administrative penalty as authorized by Finance Code §122.260, as well as institute procedures to revoke the authority to provide primary share insurance coverage in this state.

(b) An insuring organization may file a notice of appeal of a cease and desist order in accordance with §93.401 of this title (relating to Finality and Request for SOAH Hearing).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700513

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 837-9236



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.19

The Texas Department of Housing and Community Affairs (the Department) proposes new §1.19, concerning Deobligated Funds. The purpose of this new section is, in accordance with §2306.052(b)(4), Texas Government Code, to establish a procedure for use of funds returned to the Department to make them available to the community.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the proposed new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Gerber also has determined that for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of enforcing this new section will be the more efficient use of Federal funds. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to persons, small businesses or micro-businesses who are required to comply with the section as proposed. The proposed new rule will not have an impact on any local economy.

Comments may be submitted to Kevin Hamby, General Counsel, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas, 78711-3941 or by email at the following address: Kevin.hamby@tdhca.state.tx.us.

The new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

The new section affects no other code, article or statute.

§1.19. Deobligated Funds.

(a) Purpose. The Governing Board and the Department seek to facilitate the use of public funds to provide for safe decent and affordable housing for Texans in a timely manner. From time-to-time, it becomes necessary to make changes to previously awarded funds to either expedite the delivery of the funds, meet state or federal guidelines or statutes, or to meet unexpected needs like disaster relief or leveraging of additional funds. To best achieve these goals, the Department has determined that a policy is necessary to provide the public with clear and consistent rules as to how Deobligated funds occur, the reporting of Deobligated Funds and how the Department will treat Deobligated funds after an initial award has been made. The funds covered by this section are previously awarded funds under a program administered by the Department, or funds that become available to the Department through program income. The purposes of this section are:

(1) To establish procedures and Board policy on the events creating Deobligated Funds for applicable Department programs,

(2) To identify standards for reporting and maintaining Deobligated Fund balances, and

(3) To provide guidance for the reprogramming and reobligation of Deobligated or otherwise unexpended funds and program income.

(b) Definitions.

(1) Administrator--A unit of government, non-profit entity or other party who has a written signed Agreement with the Department committing the Department to provide funds upon the completion of certain actions called for in the Agreement.

(2) Agreement--A written executed agreement between the Department and an Administrator or Contractor outlining the obligations of all parties involved in the related transaction.

(3) Contract--A written executed contract between the Department and an Administrator or Contractor outlining the obligations of all parties involved in the related transaction.

(4) Contractor--A party who has a Contract with the Department to administer a program using funds provided under explicit terms and conditions in a written Contract with the Department.

(5) Deobligated Funds--The funds released by an Administrator or Contractor or recovered by the Department canceling a contract or award involving some or all of a contractual financial obligation between the Department and an Administrator or Contractor.

(6) Department--The Texas Department of Housing and Community Affairs as authorized in Chapter 2306 of the Texas Government Code.

(7) Expenditure--Approved expense evidenced by documentation submitted by the Administrator or Contractor to the Department for purposes of drawing funds from HUD's Integrated Disbursement and Information System (IDIS) for work completed, inspected and certified as complete, and as otherwise required by the Department.

(8) Executive Director--The person hired by the Governing Board with administrative duties to manage the affairs of the Department as provided under Texas Government Code §2306.036.

(9) Governing Board--The Governing Board of the Department.

(10) HOME--The HOME Investment Partnership Program at 42 United States Code §§12701 - 12839 and the regulations promulgated thereafter at 24 CFR Part 92 and governed by the Rules in 10 Texas Administrative Code §53.50 et seq.

(11) Housing Trust Fund--The fund created under Texas Government Code §2306.201 and governed by the Rules found at 10 Texas Administrative Code §51.1 et seq.

(12) HUD--United States Department of Housing and Urban Development.

(13) Program Income--Funds generated through the activities related to a program that are made available to the Department for use in funding authorized actions of the Department.

(c) Events Creating Deobligated Funds.

(1) The Department reserves the right to release their commitment to any Administrator or Contractor resulting in Deobligated funds in the event of any one of the following circumstances:

(A) Department has notified Administrator or Contractor of any outstanding compliance issues and the Administrator or Contractor has failed to either resolve the issue or take sufficient action to correct the compliance matter;

(B) Department has notified Administrator or Contractor that they have failed to meet the required timelines and/or commitment deadlines, including Expenditure of funds, per the Agreement or Contract and Administrator or Contractor has not sufficiently corrected the deficiency;

(C) The Department provides notice of default to Administrator or Contractor on any Agreement or Contract by and between Administrator and Contractor and the default has not been cured within the required time frame;

(D) Applicant materially misrepresents facts to the Department during an application process, award of contract, request for amendment, or administration of any contract;

(E) Department has notified Administrator or Contractor of their inability to provide adequate financial support to administer the contract as called for in the Agreement or Contract or meet any other material conditions and the Administrator or Contractor has failed to sufficiently correct the matter;

(F) Department has notified Administrator or Contractor of their inadequate or insufficient management controls and the Administrator or Contractor has failed to sufficiently correct the matter;

(G) Administrator or Contractor declines funds;

(H) Administrator or Contractor fails to expend all funds awarded and voluntarily releases the funds;

(I) Program income received by the Department that is used in lieu of awarded contract funds; or

(J) Other circumstances approved by the Board as warranting Deobligation.

(2) The Department shall have the sole discretion to determine whether sufficient progress or cure has been made under paragraph (1)(A) - (C) of this subsection and the sole discretion to determine what constitutes materiality in paragraph (1)(D) of this subsection, subject to appeal under 10 Texas Administrative Code §1.7.

(3) During the pendency of a challenge of an event described under paragraph (1) of this subsection by Administrator or Contractor, the Department shall not take any action resulting in Deobligated funds until an appeal as provided for under 10 TAC §1.7 has been completed. The Department may suspend reimbursement of funds during the appeal. If an appeal has not been requested, the Department may take action as allowed under this policy.

(d) Maintenance of Deobligated funds.

(1) The Department will produce a report for the Executive Director and the Board related to Deobligated funds separate from original balances and program income, including fees earned and loan repayments, as part of the accounting of program funds at both the program and Department level.

(2) The Department will ensure that HOME Deobligated fund balances are reconciled at least monthly against the unexpended fund balances maintained by HUD. The Department shall confirm balances with HUD prior to recommendation to the Board for the use of any Deobligated funds.

(3) Housing Trust Fund Deobligated funds, or any other Deobligated funds deriving from a state general revenue source, will be included in the report in paragraph (1) of this subsection, but shall not be used to establish reserve balances. The Department will initiate efforts to reprogram and reassign Deobligated funds from the Housing Trust Fund or any other state general revenue source within three months of Deobligation upon reaching a cumulative amount of Deobligated funds that facilitates reprogramming.

(4) The Department shall not retain Deobligated funds from any program in any amount that exceeds 15% of the most current annual allocation for three consecutive months and must initiate efforts to reprogram or reassign funds in excess of that standard within

90 days of the figure reaching the 15% threshold. For purposes of determining the 15% threshold, funds that are subject to disbursement under a Notice of Federal Funding, but are not yet committed are not included in the 15% threshold. Submitting a proposal for reprogramming or reassigning Funds to the Board for approval shall constitute an initiation of efforts.

(e) Reassignment of Funds. Under this policy, the Governing Board and the Department, intend to create a policy to direct staff and the public on the uses of funds that are either characterized as Deobligated Funds under this policy or Program funds.

(1) The Department shall not recommend to reprogram or reassign Deobligated funds from the HOME Program or other programs with Deobligated funds other than state general revenue funds described in subsection (d)(3) of this section for purposes other than disaster relief unless the remaining Deobligated fund balance after reprogramming of funds is an amount equivalent to or greater than 5% of the most current annual allocation of such funds, for example the annual allocation of HOME funds from HUD.

(2) It is the policy of the Department that funds not reserved for disaster relief may be used for any of the activities listed below as needed in the Department's discretion subject to the approval of the Governing Board:

(A) Successful appeals related directly to the program funds available as allowable under program rules and regulations;

(B) Leveraging of funds with other local, state or federal resources for applications made to the Department for any one or more of the programs operated by the Department;

(C) Funding of projects identified as beneficial by the Department and identified in a Notice of Funding Availability approved by the Board;

(D) Disaster relief including but not limited to disaster declarations or documented extenuating circumstances such as imminent threat to health and safety;

(E) Funding of applications for program funds on existing Department waiting lists or reservation systems;

(F) Funding to existing previously awarded eligible contracts in need of additional resources for circumstances considered unique or extenuating by the Department's Board;

(G) Funding of applications or programs that serve individuals with special needs;

(H) Settlement of litigation or HUD compliance matters;

(I) Use in Asset Resolution/Enforcement Rule activities;

(J) Funding applications or programs that serve Colonias; or

(K) Other projects/uses as determined by the Executive Director and/or Board including the next year's funding cycle for each respective program.

(f) After adoption in final form and publication in the *Texas Register*, this policy shall supersede any other rule or policy governing the use of Deobligated funds for the Department regardless of where published, unless any portion of this rule conflicts with statutory language or Federal rules, in which case those shall be controlling.

(g) Any portion of this rule may be waived for good cause by the Governing Board of the Department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 16, 2007.

TRD-200700588

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 475-4595



10 TAC §1.20

The Texas Department of Housing and Community Affairs (the Department) proposes new §1.20, concerning Asset Resolution and Enforcement. The purpose of this new section is, in accordance with §2306.052(b)(4), Texas Government Code, to streamline and centralize the asset resolution and enforcement process and to fill in where gaps were determined to exist in our ability to protect the interests of the public served and meeting the requirements set forth by rule, policy and statute.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the proposed new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Gerber also has determined that for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of enforcing this new section will be to allow the Department greater management of its assets and to provide a mechanism to assure long term compliance benefiting residents of TDHCA assisted properties. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to persons, small businesses or micro-businesses who are required to comply with the section as proposed. The proposed new rule will not have an impact on any local economy.

Comments may be submitted to Kevin Hamby, General Counsel, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas, 78711-3941 or by email at the following address: Kevin.hamby@tdhca.state.tx.us.

The new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

The new section affects no other code, article or statute.

§1.20. Asset Resolution and Enforcement.

(a) Purpose. The purposes of this section are:

(1) To provide guidance to interested parties on potential actions available to the Department when a party that has obligated itself to carry out a contract or construct or operate an asset is not performing or operating according to the agreed upon terms and

(2) To establish appropriate procedures to implement the general policy of requiring compliance with all contractual undertakings made in connection with the receipt of funds or other support provided by the Department pursuant to the various state and federal programs that it administers.

(b) Definitions.

(1) Administrator--The Person responsible for performing under a Contract with the Department.

(2) Affiliated Party--A Person in a relationship with the Administrator on a Contract with the Department. Does not apply to an Affiliated Party for Application purposes.

(3) Asset--A property covered by a LURA, Contract, grant agreement, or Commitment or any other property acquired, improved, or subsidized, directly or indirectly, in whole or in part with funds provided by any program(s) administered by the Department.

(4) Audit--An audit required to be performed by a third party or performed by the Department relating to a Contract.

(5) Board--The Governing Board of the Department.

(6) Commitment--A legally binding agreement between the Department and another party providing for funds, tax credits, or other financial support.

(7) Compliance Monitoring Fees--The fees identified in a LURA or other Contract payable by Project Owner related to an Asset.

(8) Compliance Rules--The rules found in 10 Texas Administrative Code Chapter 60.

(9) Contract--Any executed written agreement between the Department and an Administrator, Home Owner, Mortgagor, Project Owner, Subrecipient, Subrecipient Organization, or other beneficiary of a Department program.

(10) Deed-in-lieu of Foreclosure--A deed to a lender given by an owner/borrower conveying mortgaged property to prevent a lender from bringing Foreclosure proceedings or to eliminate the need for Foreclosure.

(11) Deed of Trust--An instrument used to create a lien or mortgage by which the Mortgagor transfers his or her title to a trustee who holds it as security for the benefit of a lender.

(12) Default--As defined in a LURA or Contract.

(13) Delinquent Loan--Any mortgage loan in which the scheduled payment has not been received by the due date.

(14) Department--The Texas Department of Housing and Community Affairs.

(15) Development--Any Project that has a construction component, either in the form of new construction or the rehabilitation of residential housing.

(16) Eligible Household--A household that meets the requirements associated with a Department Contract or LURA and applicable law, as in effect from time to time.

(17) Event of Default--As defined in a LURA or Contract.

(18) Executive Director--As defined under Texas Government Code §2306.036 and/or §2306.038.

(19) Finding--A report or other communication from the Department indicating a need for corrective action by an Administrator, Project Owner, Recipient, Subrecipient or other beneficiary of a Department program.

(20) Forbearance--The act of agreeing, either conditionally or unconditionally, in reliance upon express representations, to refrain from enforcing one or more legal obligations, such as making scheduled payments on a debt or complying with one or more non-monetary provisions of a Contract. A relief provision that provides for a period of reduced or suspended payments to enable the Mortgagor to cure a delinquency is an example of a forbearance.

(21) Foreclosure--A legal proceeding, in or out of court, to gain title or to force a sale of a mortgaged property in order to satisfy unpaid amounts due under the debt secured by such mortgaged property on the property.

(22) Loan Modification--A written agreement to a change in one or more terms of the Contract or contractual documents relating to an existing loan between the Department and Mortgagor.

(23) LURA--A Land Use Restriction Agreement that has been executed by the Department and a Person related to a specific property or properties and filed with required recording authorities.

(24) Mortgagor--The party (a "borrower") who borrows the money and uses his or her real property as collateral and security for the payment of the debt.

(25) Person--Any individual, partnership, corporation, association, trust, unit of government, community action agency, or public or private organization of any character, however organized.

(26) Real Estate Owned--Property acquired by the Department as the lender, usually through foreclosure or acceptance of a deed-in-lieu.

(27) Receivership--Legal action as defined in Contract or LURA.

(28) Responsible Party--The Administrator, Home Owner, Mortgagor, Project Owner, Subrecipient, Subrecipient Organization, or other beneficiary of a Department program subject to this rule for purposes of asset resolution or enforcement.

(29) Review Committee--The committee, chaired by the Executive Director and comprised of the Deputy Executive Director for Programs, the Deputy Executive Director for Administration, the Director of PMC, the Director of Real Estate Analysis and two additional rotating members appointed by the Chair. The Review Committee will determine asset resolutions or enforcement recommendations.

(30) Workout Program--A written agreement as an alternative to foreclosure that the Department may offer to the Mortgagor of a defaulted mortgage.

(c) Potential Actions Related to Home Ownership.

(1) Early Delinquency Intervention. According to the terms of a Contract between the Department and a Mortgagor the Department will provide a loan billing statement to the Mortgagor or Home Owner as payments are due. A Contract will be identified as delinquent unless the mortgage payment is made on the 16th day after the due date. A late fee will be assessed on all identified delinquent loans. A computer generated "Friendly Reminder" notice of default is mailed to the Mortgagor on any loan for which payment has not been received by the 16th day of the month payment was due. A "Late Payment" notice of default is mailed to the Mortgagor on any loan that is past due more than forty-five (45) days. An "Urgent" notice of default is mailed to the Mortgagor on all loans that are more than sixty (60) days past due. The status of all mortgage loans serviced in-house by the Loan Servicing section will be reported monthly to the Credit Bureau through the Department's credit reporting processes, including delinquencies.

(2) Workout Program. The Department supports delinquent Mortgagors' efforts to meet their mortgage obligations so they can avoid Foreclosure and remain in their homes when feasible. That means, among other things, using available tools that are appropriate under the circumstances to avoid Foreclosure; being judicious in approaching loss mitigation efforts and promoting open and effective communication with Mortgagors, including giving reasonable

opportunity to resolve legitimate disputes. The Department after consultation with the Review Committee may, but is not required to, perform one or more of the following alternatives to cure the delinquency:

(A) Phone Contact. Delinquent Mortgages identified as more than forty-five (45) days past due may be contacted by phone to determine why the Mortgage has not made the required payment(s). The Mortgage is encouraged to contact the Department prior to this call to notify the Department of circumstances for the delinquencies.

(B) Face-to-Face Interviews. Face-to-face interviews may be conducted when phone contact is not possible with the Mortgage, and/or the Mortgage is unresponsive to various attempts by the Department to establish communication and discuss the delinquency. Face-to-face interviews are done to determine the condition of the Department's collateral and discuss workout options available to the Mortgage. If the Mortgage is unavailable at the time a face-to-face interview is attempted, the Department will leave a "Collection Flyer" notice of default, marked "confidential," addressed to the Mortgage at the property location.

(C) Written Repayment Agreement. Once a Mortgage's ability to pay has been assessed, if the period necessary to cure the delinquency will exceed forty-five (45) days from the time contact is made, the Department will require the Mortgage to enter into a formal written repayment agreement specifying the terms of repayment for the delinquent amount. Only in exceptional cases will a repayment period exceed twelve (12) months. If the Mortgage abides by the terms of the written repayment agreement, the Department may suspend accrual of late fees for the duration of the agreement.

(D) Forbearance. The Review Committee may recommend a Forbearance agreement if the Mortgage is temporarily unable to make any amount of payment due because of documented evidence of illness, death of a co-mortgage, or loss of employment. Forbearance agreements will not exceed three (3) months. Any suspended payments will be made up as an additional single payment upon maturity. All accrued unpaid principal and interest amounts will be added to the end of the loan as a balloon payment. This will not result in a change of terms, and no recording fees or T-38 Endorsement will be necessary.

(E) Loan Modification. The Review Committee may recommend a loan modification to alter the terms of the note including, but are not limited to, the interest rate, principal balance, payment amount, and the maturity date. This is a formal change in the original terms of the note. Any principal, escrow shortages, and fees such as recording fees, title policy fees, and pre-foreclosure fees will be included in the new terms.

(F) Pre-foreclosure Sale. If the Mortgage is unable to cure its delinquency, and the Mortgage's desire is to avoid Foreclosure by the Department, the Department may consent to the sale of the property by the Mortgage to a third (3rd) party buyer within a reasonable time as determined by the Department. If the proceeds from the Pre-foreclosure Sale are insufficient to extinguish the Mortgage Lien, the remaining outstanding balance under the Note secured by the Mortgage Lien will be converted to an Unsecured Note executed by the original Mortgage payable to the Department unless other provisions are stated in the Note and/or Deed of Trust.

(G) Deed-in-lieu of Foreclosure. On a seriously delinquent mortgage where other options have been unsuccessful and/or the Mortgage intends to abandon the property, the Department may consent to a Deed-in-lieu of Foreclosure. As a condition of the Department accepting a Deed-in-lieu of Foreclosure, the property must be free and clear of all encumbrances and liens other than liens of the Department.

(3) Final Resolution. In the event that a workout as described in paragraph (2) of this subsection is unsuccessful, the Department upon recommendation of the Review Committee may take one of more of the following actions:

(A) Creditor Claim in Bankruptcy. When a Mortgage files for bankruptcy, the Department will take all actions that are necessary to protect its interests. All collection efforts outside the bankruptcy courts by the Department will cease during the bankruptcy period. The Department will file a proof of claim when appropriate. In a bankruptcy case that has been dismissed, all normal collection efforts will resume. In a bankruptcy case that has been Discharged in Bankruptcy, the Mortgage will either reaffirm the debt in accordance with the bankruptcy or the Department may proceed to foreclose on the mortgage lien.

(B) Foreclosure. After all workout options have been exhausted, the Review Committee will review the loan for possible recommendation to foreclose on the property used as collateral to secure the Mortgage Lien. If the Department is in an inferior lien position, and the value of the property warrants it, the Department may elect to purchase a superior lien loan in order to proceed with Foreclosure and protect its interest.

(C) Debt Forgiveness. In exceptional circumstances, the Review Committee may recommend the forgiveness based on hardship conditions. The Committee shall consider the following conditions as hardships: documented long term disability resulting in a permanent inability to pay, and a permanent inability to pay where it would not be in the best interest of the Department to foreclose based on economic conditions of the property and/or continued expenses which are incurred due to escrow responsibilities. The ability to forgive will also be contingent upon the method of funding. All hardship cases will be considered on a case by case basis. In cases where program guidelines allow for forgiveness based on death of borrower(s), the Department will take the appropriate steps to forgive these loans.

(D) Charge-offs. When the Department determines that all collection efforts have been exhausted on delinquent loans and there is no economic value in foreclosure the loan may be charged off. A charge-off will be reported to the credit bureau through the Department's normal credit reporting processes and to any appropriate agencies including the IRS. When a debt has been charged off, the Mortgage will be placed on the Department's Debarment list and will not be eligible to apply for future programs.

(d) Potential Actions Related to Multi-family Properties

(1) Financial Delinquency Issues. Owner/managers who fail to perform under the terms of the loan documents leading to an event of default will be provided timely notice of the default. For purposes of this rule a financial delinquency occurs when the responsible party fails to pay loan payments or fees due in a timely manner, fails to maintain adequate insurance and/or fails to pay taxes on a timely basis. When an event of default occurs, the Department will:

(A) Notice. The Department will provide notice according to terms of the Loan Documents and or LURA to the obligor that a potential event of default has occurred. For events of default that are curable, the notice will provide a reasonable time period for correction, not to exceed sixty (60) days from the date notice or such longer period as may be required by the Contract.

(B) Workout. In the event the Responsible Party contacts the Department within the corrective period and provides sufficient evidence of the cause for a failure to pay, the Department may enter into a workout plan that may include: Forbearance of the payment of loans or fees; Loan modification; a payment of taxes or a placement of insurance at additional cost to the Responsible Party. Workouts

must address those factors that the Department, in its sole discretion, deems appropriate to address the cause of the problems that required the workout, such as a requirement of a change of management for a property where multiple events of default occur or a repeated pattern of defaults occur. Only in exceptional cases, approved by the Board on the recommendation of the Review Committee, will a Forbearance period exceed twelve (12) months. Not more than one year of taxes or one year of insurance premium shall be added to the principal amount of the note during the workout period without further corrective action being taken. If a loan modification is recommended by staff, the extension of the note or reduction of the interest to be paid will be consistent with then existing policies of the Department. The Review Committee will approve any modifications to Contract or LURAs.

(C) Final Resolution. In the event the Responsible Party and the Department cannot agree upon terms of a workout within six (6) months, the Department will consider all legal action available to it at the end of the six months. All legal action includes litigation up to and including placing the property in Receivership or Foreclosure on the property.

(D) Waiver and Actions Consistent with Other Law. Any failure to act by the Department does not constitute a waiver of this rule. Where applicable, the Department will seek to protect the interests of the Department on behalf of the State of Texas. Nothing in this rule is intended to conflict with the laws of the United States and the State of Texas and where any conflicts arise, the rule will defer to the existing laws.

(2) Monitoring During Compliance Period (Tax Credit Properties). During the compliance period, any tax credit property found to be in violation of 10 Texas Administrative Code Chapter 60 will be covered by this Rule in addition to the Internal Revenue Service Code, Code of Federal Regulations and related revenue rulings and any other official guidance provided by the Internal Revenue Service.

(3) Monitored Properties (Tax Credit Properties After Original Compliance Period, HTF or HOME Properties Subject to a LURA). Properties failing to comply with the rules of the Department and/or the terms of the related LURAs are subject to the following actions:

(A) Because of the additional staff time and additional record keeping requirements associated with non-compliance with the agreed upon terms the following table is established as a compliance penalty structure as indicated:
Figure: 10 TAC §1.20(d)(3)(A)

(B) Compliance Penalty Enforcement. In determining the compliance penalty, the Department will use a list of published factors to assess the amount of the penalty. Compliance penalties will continue to be assessed until such time as the corrective action has been taken. In the event that corrective action is not taken, the Department will take the following actions:

(i) Provide notice to the last known address of the party against whom the penalty has been assessed;

(ii) A description of the violations and the governing authority for application of the compliance penalty;

(iii) The procedures for appealing the compliance penalty assessed including the provisions under 10 Texas Administrative Code §§ 1.7, 1.8 and 1.17.

(iv) If the party either does not respond or fails to take corrective action, the Department will refer the matter to the Attorney General for determination of the legal remedies available and action to be taken.

(e) Potential Actions Related to Contract Administration on Awarded Funds.

(1) Contracts Involving Department Awards. The Department is responsible for numerous awards of funds intended to benefit Texans who qualify for programs administered by the Department. Frequently these programs are administered by Subrecipients--some of whom directly perform the work and others who hire others to assist them in service delivery. These rules either repeat or supplement the language included in individual contracts. When a contractor fails to perform adequately, the Department may take any of the following actions:

Figure: 10 TAC §1.20(e)(1)

(2) Special Conditions for Contract Involving Construction Awards. In addition to the contract actions found in paragraph (1) of this subsection, the following are potential actions specifically related to construction related awards:

Figure: 10 TAC §1.20(e)(2)

(f) Administration of Section.

(1) Program and Compliance staff will be the first line reviewers for performance with Department policies and procedures related to Contracts and/or LURA's. After providing initial notice to the Responsible Party and time for response, the involved staff will refer non-resolved matters to identified asset resolution and enforcement staff. The asset resolution and enforcement staff will review and develop a recommended action plan and timeline to the Review Committee, including final resolution if other efforts are not successful. The Review Committee will approve, approve with modifications or reject the submitted plan. The Executive Director will evaluate to determine if Board action is required.

(2) The asset resolution and enforcement staff will implement the approved plan including any required referrals to the Office of the Attorney General or other parties.

(3) Unless otherwise indicated, Responsible Parties will have access to Department procedures for appealing actions taken under this rule including the provisions under 10 Texas Administrative Code §§1.7, 1.8 and 1.17.

(4) If the Department has determined that a provision of this rule must be expedited to protect the assets of the State of Texas, any non-statutory timeline may be reduced by the Department.

(5) Any section of this rule may be waived for just cause by the Executive Director or the Governing Board except for notice provisions and federal and state statutory provisions.

(g) Debarment for Failure to Perform.

(1) Any Administrator, Affiliated Party, Person or Responsible Party receiving funds (including Housing Tax Credits) directly or indirectly may be subject to debarment under this section.

(2) Procedures for Placement in Debarment.

(A) Recommendation for inclusion on the debarment list is done by referral from Department Division Directors. An Administrator, Affiliated Party, Person or Responsible Party may also submit a referral to a Department Division Director for consideration.

(B) Once referred the Administrator, Affiliated Party, Person or Responsible Party will be placed in Suspension status. While in Suspension the entity can continue to be reviewed for participation in the application or allocation cycle, but a review by the Review Committee must be completed prior to the award of Department funds (or allocation of Housing Tax Credits). A determination of inclusion on the debarment list will preclude the entity from participation for the term

determined by the Review Committee, beginning with any current application or allocation award request. The following actions will be taken by the referring Department Division Director:

(i) Notice will be provided to the Administrator, Affiliated Party, Person or Responsible Party of the referral to the Department's Review Committee for inclusion on the debarment list.

(ii) The Administrator, Affiliated Party, Person or Responsible Party will be given an opportunity to provide information for consideration by the Review Committee. This information must be submitted within 14 working days from the date of notice.

(C) The Department Division Director will present the Review Committee with the following for consideration of the referral:

(i) Documentation to support the action that the Administrator, Affiliated Party, Person or Responsible Party has taken to warrant referral for placement on the debarment list.

(ii) A copy of the notice provided to Administrator, Affiliated Party, Person or Responsible Party.

(iii) A copy of any information provided in response by the Administrator, Affiliated Party, Person or Responsible Party to the notice.

(D) The Review Committee may determine based on the information provided that the entity does not warrant being placed on the debarment list. The Review Committee may recommend placement on the debarment list and will recommend a term for debarment based on the following structure:

Figure: 10 TAC §1.20(g)(2)(D)

(E) Agreement of Appeal. 10 days appeal or invoke the Alternative Dispute Resolution Rule, §1.17.

(F) The Board of Directors will provide final approval for placement on the Debarment list. The board will review the Review Committees' determination and recommended term of debarment. The Administrator, Affiliated Party, Person or Responsible Party will be given opportunity to appeal during the Board Meeting.

(G) Once approved by the Department's Board of Directors the entity will be placed on the Debarment List for the determined term.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 16, 2007.

TRD-200700589

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 475-4595



CHAPTER 53. HOME INVESTMENT PARTNERSHIP PROGRAM

10 TAC §53.62

The Texas Department of Housing and Community Affairs proposes an amendment of §53.62, concerning deobligation of

funds. The department is recommending a new administrative rule that will provide stricter guidelines on the timely reprogramming and obligation of funds while also ensuring availability of funds for disasters. Further, this existing deobligation policy has been a challenge because it listed eligible uses of deobligated funds in a specific prioritized order. Because the events that prompt a need for specific eligible use of deobligated funds do not necessarily occur in the same neatly prioritized order as the existing list, it has been challenging to ensure adherence to the priorities listed.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Gerber also has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of this amendment will be consistency with another rule on the subject of deobligation. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to persons, small businesses or micro-businesses who are required to comply with the section as proposed. The proposed amendment will not have an impact on any local economy.

Comments may be submitted to Kevin Hamby, General Counsel, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or by email at the following address: Kevin.hamby@tdhca.state.tx.us.

The proposed amended section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

The proposed amended section affects no other code, article or statute.

§53.62 Program Administration.

(a) - (b) (No change.)

[(e) Deobligation.]

[(1) The Department reserves the right to deobligate funds in the following situations:]

[(A) Recipient has any unresolved compliance issues on existing or prior contracts with the Department;]

[(B) Recipient fails to set-up programs/projects or expend funds in a timely manner;]

[(C) Recipient defaults on any agreement by and between Recipient and the Department;]

[(D) Recipient misrepresents any facts to the Department during the HOME application process; award of contracts; or administration of any HOME contract;]

[(E) Recipient's inability to provide adequate financial support to administer the HOME contract or withdrawal of significant financial support;]

[(F) Recipient is not in compliance with 24 CFR Part 92, or of these rules;]

[(G) Recipient declines funds; or]

[(H) Recipient fails to expend all funds awarded.]

[(2) The Department, with approval of the Board, may elect to reassign funds following the Deobligation Policy, adopted by the Board on January 17, 2002; in the order prioritized as follows:]

~~{(A) Successful appeals (as allowable under program rules and regulations);}~~

~~{(B) Disaster Relief (disaster declarations or documented extenuating circumstances such as imminent threat to health and safety);}~~

~~{(C) Special Needs;}~~

~~{(D) Colonias; or}~~

~~{(E) Other projects/uses as determined by the Executive Director and/or Board including the next year's funding cycle for each respective program.}~~

(c) ~~{(d)}~~ Waiver. The Board, in its discretion and within the limits of federal and state law, may waive any one or more of these Rules if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for good cause, as determined by the Board.

(d) ~~{(e)}~~ Additional Funds. In the event the Department receives additional funds from HUD, the Department, with Board approval, may elect to distribute funds to other Recipients.

(e) ~~{(f)}~~ Accounting Requirements. Within 60 days following the conclusion of a contract issued by the Department the recipient shall provide a full accounting of funds expended under the terms of the contract. Failure of a recipient to provide full accounting of funds expended under the terms of a contract shall be sufficient reason to terminate the contract and for the Department to deny any future contract to the recipient.

(f) ~~{(g)}~~ Department may terminate a contract in whole or in part. If Applicant has not achieved substantial progress in performance of a contract within six (6) months of the effective date of this contract, the contract will terminate. The Department will track substantial progress during the initial six (6) month period and throughout the contract term. Substantial progress in contract performance must be satisfactorily completed during the term of the contract as follows:

(1) Owner-Occupied Housing Assistance:

(A) 6 months, Contract Environmental Clearance must be complete;

(B) 12 months, 50% of funds must be committed, 25% of funds drawn, and 25% of match supplied;

(C) 18 months, 100% of funds must be committed, 50% of funds drawn, and 50% of matched supplied;

(D) 24 months, 100% of funds must be committed, 100% of funds drawn, and 100% of matched supplied;

(2) Homebuyer Assistance Activities:

(A) 6 months, Environmental Clearance must be complete;

(B) 12 months, 50% of funds must be committed, 25% of funds drawn, and 25% of match supplied;

(C) 18 months, 75% of funds must be committed, 50% of funds drawn, and 50% of matched supplied;

(D) 24 months, 100% of funds must be committed, 100% of funds drawn, and 100% of matched supplied;

(3) Tenant-Based Rental Assistance:

(A) 6 months, Contract Environmental Clearance must be complete;

(B) 12 months, 50% of funds must be committed, 25% of funds drawn, and 25% of match supplied;

(C) 18 months, 75% of funds must be committed, 50% of funds drawn, and 50% of matched supplied;

(D) 24 months, 100% of funds must be committed, 75% of funds drawn, and 75% of matched supplied;

(E) 30 months, 100% of funds must be committed, 100% of funds drawn, and 100% of matched supplied;

(4) Lower percentages, due to extenuating circumstances, may be allowed as approved by the Executive Director.

(5) Definitions and Terms. The following words and terms, when used in the subsection, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Extenuating Circumstances--An event or set of incidents beyond the control of the Applicant.

(B) Committed--Funds budgeted to a household in the Department's central database and approved by the Department.

(C) Drawn--Funds approved by the Department for reimbursement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 16, 2007.

TRD-200700590

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 475-4595



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING

SUBCHAPTER F. REFERENCE DOCUMENTATION

22 TAC §133.51

The Texas Board of Professional Engineers proposes an amendment to §133.51, relating to Reference Providers. The proposed amendment clarifies the difference between reference statements and reference providers.

The proposed amendment adds language to differentiate between reference statements and reference providers.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There

is no fiscal impact to individuals required to comply with the rule. There is no effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment would be a clear and effective application process ensuring the licensure of qualified individuals.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, that authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state; §1001.302, that outlines the minimum requirements for licensure; and §1001.303, that lists the requirements for an application for licensure

No other statutes, articles or codes are affected by the proposed amendment.

§133.51. Reference Providers.

(a) Applicants for licensure shall provide reference statements [referenees] to verify character suitability for licensure and all engineering experience claimed to meet the minimum years of experience required. Reference statements will be used to verify the applicant's character and the factual presentation of the applicant's experience and to determine to the extent the experience is creditable engineering experience.

(1) Standard Licensure Procedure. Applicants applying under §1001.302(a)(1)(A) or (B) of the Act, including those applicants licensed in another jurisdiction or previously licensed in Texas, shall provide reference statements from at least three reference providers [referenees]. These reference providers shall be [from] currently licensed professional engineers who have personal knowledge of the applicant's character, reputation, suitability for licensure, and engineering experience and shall review all [or the] applicable portions of the applicant's supplementary experience record and complete the reference statement in full.

(2) Waiver of Examinations Procedure. Applicants requesting a waiver from the examinations on the fundamentals of engineering or principles and practice of engineering shall provide reference statements from at least five reference providers [referenees]. These reference providers shall be [from] currently licensed professional engineers who have personal knowledge of the applicant's character, reputation, suitability for licensure, and engineering experience and shall review all [or the] applicable portions of the applicant's supplementary experience record and complete the reference statement in full.

(3) Reciprocal or Comity Licensure Procedure (Canada and the United Mexican States through NAFTA). Applicants applying under §1001.311 of the Act and the NAFTA Mutual Recognition Agreement shall provide reference statements from at least three reference providers [referenees]. These reference providers shall be [from] currently licensed professional engineers who have personal knowledge of the applicant's character, reputation, suitability for licensure, and engineering experience and shall review all [or the]

applicable portions of the applicant's supplementary experience record and complete the reference statement in full.

(b) Professional engineers who have not worked with or directly supervised an applicant may review and judge the applicant's experience and may serve as a licensed engineer reference provider; such review shall be noted on the reference statement.

(c) All reference providers shall be [provided by] individuals with personal knowledge of the applicant's character, reputation, and general suitability for holding a license. If possible, reference providers should be [provided by] individuals who directly supervised the applicants.

(d) (No change.)

(e) Professional engineers who provide reference statements [referenees] shall not be compensated.

(f) Reference statements [Referenees] on file with the board from previous applications may be used upon written request of the applicant and with the approval of the executive director.

(g) The board members and staff may, at their discretion, rely on any, all, or none of the reference statements [referenees] provided in connection with an application for licensure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 16, 2007.

TRD-200700546

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 440-7723



SUBCHAPTER G. EXAMINATIONS

22 TAC §133.67

The Texas Board of Professional Engineers proposes an amendment to §133.67, relating to the Examination on the Principles and Practice of Engineering. The proposed amendment will modify the requirements to sit for the Principles and Practice of Engineering (PE) exam.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Professional Engineers withdraws the previously proposed amendment to §133.67, which was published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7917).

The proposed rule change removes the minimum experience requirement to sit for the PE exam for certain applicants. Previously, applicants had to meet a minimum experience requirement (4 or 8 years), based upon their educational background, prior to being approved to sit for the PE exam. The proposed amendment would allow an applicant that is currently a certified Engineer-In-Training (EIT) to sit for the PE exam one time prior to gaining the minimum experience requirement for licensure. If an examinee could not make the original date for the exam, they would be able to reschedule their exam twice, for a total of three scheduled dates. If the examinee misses all three scheduled dates, or if they fail the PE exam, they would have to wait until

they met the minimum experience requirement prior to scheduling their next attempt to sit for the PE exam.

The proposed rule would not change the minimum experience requirement for licensure. An examinee that has taken and passed the PE exam prior to gaining the minimum experience requirement would still be required to gain the full experience required prior to licensure.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there is a potential positive fiscal impact for the state or local government if examination registration increases as a result of administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no fiscal impact to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is an increased incentive for applicants to complete the licensure process. However, since this policy would not be in line with the requirements of some other jurisdiction, it could pose issues for examinees that wish to become licensed via reciprocity in other states.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state; §1001.302, which outlines the minimum requirements for licensure; and §1001.304, which lists the requirements the Board must meet for providing an examination.

No other statutes, articles or codes are affected by the proposed amendment.

§133.67. Examination on the Principles and Practice of Engineering.

(a) (No change.)

(b) An individual may apply to take the examination on the principles and practice of engineering prior to meeting the experience requirements for licensure listed in Subchapter E of this chapter (relating to Experience) if the individual:

(1) has taken and passed the fundamentals of engineering examination;

(2) meets the educational requirements listed in §133.31 of this chapter (relating to Educational Requirements for Applicants);

(3) is a registered Engineer-in-Training in Texas; and

(4) is a current resident of Texas.

(c) Individuals who are approved to take the examination on the principles and practice of engineering prior to meeting the experience requirements for licensure shall have one opportunity to take and pass the examination prior to applying for licensure.

(1) If the examinee passes the examination, the examinee will be required to complete all other requirements prior to application for licensure.

(2) If the examinee does not pass the examination, the examinee will be required to take and pass the examination or qualify for a waiver of the examination per §133.69 of this chapter (relating to Waiver of Examinations) prior to licensure. The examination taken prior to meeting the experience requirements for licensure will count as one of the four opportunities outlined in subsection (d) of this section.

(3) If the examinee is not able to sit for an examination as scheduled, the examinee may register to take a subsequent examination. An examinee is permitted to register for an examination a maximum of three times prior to meeting the experience requirements for licensure.

(d) [(b)] Applicants for licensure who are approved to take the examination on the principles and practice of engineering after completing the experience requirements for licensure shall:

(1) be advised of the first examination date for which they are eligible;

(2) schedule to test in an area of competency as demonstrated by their experience and education;

(3) be solely responsible for timely scheduling for the examination and any payment of examination fees; and

(4) have no more than four consecutive examination opportunities, including the examination given on the date of the first available examination, to pass the examination. Except as provided for in §133.61(i) of this chapter, no extensions shall be granted under any circumstances.

(A) Once an applicant has scheduled for an examination that is offered once per year, the consecutive opportunities shall be counted as one annually as long as the applicant does not schedule to sit for an examination that is offered twice per year.

(B) Once an applicant has scheduled for an examination that is offered twice per year, either for the first time or after scheduling for an examination that is offered once per year, the remaining consecutive opportunities shall be counted as two annually from that examination forward until the four consecutive opportunities expire.

(e) [(e)] Applications for licensure from applicants who do not pass the examination within the allotted time shall be denied pursuant to §133.87 of this chapter (relating to Final Action on Applications).

(f) [(d)] The examination on the principles and practice of engineering shall be offered according to the schedule determined by the National Council of Examiners for Engineering and Surveying or by the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 16, 2007.

TRD-200700547

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 440-7723

◆ ◆ ◆
22 TAC §133.69

The Texas Board of Professional Engineers proposes an amendment to §133.69, relating to Waivers of Examinations. The proposed amendment clarifies the requirements for applying for a waiver of the Principles and Practice of Engineering exam for applicants who are currently licensed in another U.S. state or territory and those who are currently licensed in Mexico or Canada.

The proposed rule amendment adds language to clarify the requirements for a waiver of the Principles and Practice of Engineering examination. Applicants who are currently license in another U.S. state or territory will receive a standard license, while those who are currently licensed in Canada or Mexico and are applying via NAFTA must meet all requirements outlined in §133.11 and will receive a temporary license.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no fiscal impact to individuals required to comply with the rule. There is no effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment would be a clear and effective application process ensuring the licensure of qualified individuals.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state; and §1001.305, which allows the Board to waive examination requirements for licensure.

No other statutes, articles or codes are affected by the proposed amendment.

§133.69. Waiver of Examinations.

(a) - (b) (No change.)

(c) Waiver of Principles and Practice of Engineering Examination. Applications for a waiver of the principles and practice of engineering examination will only be accepted from persons who meet the requirements of [paragraphs (1) or (2) of] this subsection.

(1) Currently Licensed in U.S. State or Territory: An applicant who is applying for a standard license and is [Another Jurisdiction: Be] currently licensed and in good standing in any U.S. state or territory shall[; Canada, or the United Mexican States, and]:

(A) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have 12 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or

(B) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have 16 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter;

(2) Currently Licensed in Canada or United Mexican States: An applicant applying for a temporary comity license via NAFTA shall meet the requirements of §133.11(3) of this chapter, and:

(A) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have 12 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or

(B) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have 16 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter;

(3) [(2)] Engineering Educator:

(A) meet the requirements of §133.25(a) and §133.25(b)(1) of this chapter and have:

(i) taught in an EAC/ABET-accredited or -approved program for at least six years and began teaching engineering prior to September 1, 2001;

(ii) at least six years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience, as evaluated by the board under §133.43 of this chapter and began teaching engineering prior to September 1, 2001; or

(iii) at least four years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or

(B) meet the requirements of §133.25(a) and §133.25(b)(2) of this chapter and have:

(i) taught in an EAC/ABET-accredited or -approved program for at least eight years and began teaching engineering prior to September 1, 2001;

(ii) at least eight years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience, as evaluated by the board under §133.43 of this chapter and began teaching engineering prior to September 1, 2001; or

(iii) at least six years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter.

(d) An applicant is not eligible to request a waiver of the examination on the fundamentals of engineering if the applicant has taken and failed any examination on the fundamentals of engineering within the previous two years.

(e) An applicant is not eligible to request a waiver of the examination on the principles and practice of engineering if the applicant has taken and failed any examination on the principles and practice of engineering within the previous four years.

(f) Applicants requesting a waiver from any examination(s) shall file any additional information needed to substantiate the eligibility for the waiver with the application, as provided in §133.51 of this chapter (relating to Reference Providers), and §133.53 [§133.52] of this chapter (relating to Reference Statements). The board shall review all elements of the application to evaluate waiver request(s) and may grant a waiver(s) to qualified applicants.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 16, 2007.

TRD-200700548

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 440-7723



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER G. NONPROFIT ORGANIZATIONS

The Texas Parks and Wildlife Department (the department) proposes the repeal of §§51.161 - 51.163, 51.165, and 51.166, and new §§51.161 - 51.167, regarding nonprofit organizations. The repeals and proposed new sections are necessary to implement the requirements of Parks and Wildlife Code, Chapter 11, Subchapter J, §§11.201 - 11.207 and Government Code, §2255.001(a).

The Parks and Wildlife Code authorizes the department to work with nonprofit organizations to carry out the mission of the department. Parks and Wildlife Code, §11.202, requires the Parks and Wildlife Commission (the commission) to adopt rules to "establish the best practices for nonprofit partners." Parks and Wildlife Code, §11.203, requires the commission to adopt rules regarding "state standards and safeguards for accounting for state assets held by the nonprofit partner." Parks and Wildlife Code, §11.205, authorizes the commission to designate an official nonprofit partner dedicated to meeting department goals. Parks and Wildlife Code, §11.205(f), requires the commission to establish by rule guidelines for the official nonprofit partner's solicitation and acceptance of sponsorships and the best practices of the official nonprofit partner.

Similarly, Government Code, Chapter 2255, requires a state agency to adopt rules regarding the relationship between donors and the agency, including the agency's employees if the agency is authorized to accept donations or if "a private organization exists that is designed to further the purposes and duties of the agency." Tex. Gov't Code §2255.001(a).

Nonprofit partners serve an important function for the department. These organizations provide valuable financial and in-kind support to the department.

The proposed rules categorize each of the department's nonprofit partners as a general nonprofit partner (GNP), a closely related nonprofit partner (CRNP), or the official nonprofit partner (ONP). A general nonprofit partner is a nonprofit partner that is not a closely-related nonprofit partner or the official nonprofit partner and has an agreement of any kind with the department, has a representative serving on a department or commission advisory committee, or otherwise has a relationship with the department. A closely related nonprofit partner is a nonprofit part-

ner whose primary purpose is to benefit a specific department property, facility or program. Closely related nonprofit partners include "friends groups" (e.g., Friends of Cedar Hill, Friends of San Angelo State Park). The official nonprofit partner is the entity designated as the official nonprofit partner of the department by the commission in accordance with Texas Parks and Wildlife Code, §11.205. In 2001, the commission designated the Texas Parks and Wildlife Foundation as the department's official nonprofit partner. Because the ONP and CRNPs enjoy a closer relationship with the department, the rules proposed rules impose additional requirements on those organizations. The term "nonprofit partner" refers collectively to GNPs, CRNPs and the ONP.

To ensure clarity, proposed new §51.161, concerning Definitions, defines terms used in the proposed rule, including closely related nonprofit partner, commission, department, donor, director, general nonprofit partner, gift, improvement, IRS 990, in-kind donation, local sponsorship, nonprofit entity, nonprofit partner, official nonprofit partner, program, regional director, sponsor, sponsorship, and statewide sponsorship.

Proposed new §51.162, concerning Criteria and General Requirements, sets out the general criteria for all nonprofit partners, including designation by the commission, receipt of a nonprofit determination letter from the U.S. Internal Revenue Service (IRS), support of department's goals, and disposition funds raised for the benefit of the department. In addition, the proposed new section provides that the ONP and each CRNP must enter an agreement with the department, must be incorporated in accordance with the Texas Nonprofit Corporation Act (Business Organizations Code, Chapter 22) and must notify the department of any change in tax status.

The proposed new rules describe four types of best practices: general best practices; best practices regarding officers and directors; best practices regarding fundraising; and best practices regarding sponsorships.

Proposed new §51.163, concerning Best Practices (General), describes the general best practices. Proposed subsection (a) applies to all nonprofit partners. Proposed subsection (b) applies only to CRNPs and the ONP. Proposed subsection (c) applies only to the ONP. The proposed general best practices applicable to all nonprofit partners prohibit a NP from holding or obligating department funds, prohibit a NP from using department intellectual property without the department's written agreement, prohibit a NP from using department facilities or services without department approval, and require a NP to comply with applicable law and department guidelines, including anti-discrimination laws. CRNPs and the ONP must comply with additional requirements. Each CRNP and the ONP must file with the department and make available to the public an annual IRS 990 (Return of Organization Exempt from Tax); conduct business in a manner to ensure transparency; file an annual report and organizational documents (bylaws, articles of incorporation, financial statements) with the department and make those documents available to the public; and notify the department of each meeting and allow a department representative to attend. The proposed rules prohibit CRNPs or the ONP from lobbying, as defined in Government Code, Chapter 305, or supporting a political candidate. Under the proposed rules, the ONP must also have an annual audit and maintain adequate officers and directors liability insurance.

Proposed new §51.164, concerning Best Practices (Officers and Directors), describes the best practices related to officers and directors. Proposed subsection (a) applies to all nonprofit part-

ners; subsection (b) applies only to CRNPs and the ONP; and, subsection (c) applies only to the ONP. All nonprofit partner officers and directors must be provided a copy of the department's Land and Water Resources Conservation and Recreation Plan (the Plan) or a link to the Plan on the department's web site. This requirement is also contained in Parks and Wildlife Code, §11.204. In addition, the proposed new section requires that each CRNP and the ONP have a conflict of interest policy; pay only reasonable compensation to executives and managers; hold regular board meetings; and provide organizational and related documents to new board members and directors. In addition, each CRNP and the ONP must prohibit a department employee or commissioner from being an officer or director (except in a non-voting capacity),

Proposed new §51.165, concerning Best Practices (Fundraising), describes the best practices related to fundraising. Proposed subsection (a) applies to all nonprofit partners. Proposed subsection (b) applies only to CRNPs. Proposed subsection (c) applies to CRNPs and the ONP. The proposed new section allows all nonprofit partners to conduct fundraising and undertake programs to benefit the department as agreed in writing by the department, but prohibits a NP from obligating the department unless agreed in writing in advance by the department. This proposed section requires that all nonprofit partners have financial procedures governing the handling of funds raised for the benefit of the department and engage in reasonable and prudent financial management practices. In addition, this proposed section requires that funds raised and projects undertaken by a CRNP must benefit the facility, property or program with which the CRNP is associated or must further the CRNP's mission related to the facility, property or program. These fundraising restrictions are not intended to limit the ability of a nonprofit partner to make an unrestricted donation to the department. The proposed new section also allows NPs, CRNPs and the ONP to work together towards a common goal for the benefit of the department.

Proposed new §51.166, concerning Best Practices (Sponsorship), describes the best practices related to sponsorships. Proposed subsection (a) applies to all nonprofit partners. Proposed subsection (b) applies only to CRNPs and the ONP. Under the proposed new section, any nonprofit partner must have prior written approval from the department to sponsor a department program. Under this proposal, the department will only provide the level of sponsorship recognition approved in advance by the department. Under the proposed new section, statewide sponsorships would require the approval of the director and local sponsorships would require the approval of the appropriate regional director. In addition, the proposal places other limits on sponsorship, including prohibiting the acceptance of a sponsorship from certain persons or entities where a conflict of interest may result, prohibiting sponsorship signage on vehicles that were purchased or are maintained with department funds, limiting sponsorship recognition to the programs for which sponsorship support has been provided, and prohibiting a department employee from acting as agent for a nonprofit partner in negotiating a sponsorship package with the department. The proposal also limits the level of sponsorship recognition that the department will provide, to ensure that such recognition does not overshadow the department and is appropriate when considering the level of sponsor support.

Proposed new §51.167, concerning Department Procedures, sets out general department procedures including the periodic

designation of NPs and a prohibition on the department obligating NP funds or property. The proposed new section also allows the ONP to reimburse department employees for legitimate travel expenses, allows the ONP to award department scholarships, and requires commission approval of all donations of \$500 or more.

Ann Bright, General Counsel, has determined that for each of the first five years the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules beyond those currently existing.

Ms. Bright has also determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the provision of clear guidance to nonprofit entities that are engaging in activities for the benefit of the department. Nonprofit organizations provide important in-kind and financial support to the department.

The proposed new rules will result in no adverse economic effects to small or micro businesses. Government Code, Chapter 2006, defines small and micro-businesses as entities "formed for the purpose of making a profit." Tex. Gov't Code §2006.00(1)(A), (2)(A). Since the proposed rules apply to nonprofit organizations, the proposed rules will not apply to small or micro-businesses.

The department has not filed a local impact statement as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rules may be submitted by phone, written correspondence or e-mail to Ann Bright, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8558; or ann.bright@tpwd.state.tx.us.

31 TAC §§51.161 - 51.163, 51.165, 51.166

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the authority of Parks and Wildlife Code, §§11.202, 11.203, 11.205, and Government Code, §2255.001.

The proposed repeals affect Parks and Wildlife Code, §§11.201 - 11.207.

§51.161. *Definitions.*

§51.162. *Closely Related Nonprofit Organizations.*

§51.163. *Conflict of Interest, Performance of Services, and Use of Department Facilities.*

§51.165. *Best Practices of the Official Nonprofit Partner (ONP).*

§51.166. *Sponsorship Requirements.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2007.

TRD-200700456

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 389-4775



31 TAC §§51.161 - 51.167

The new rules are proposed under the authority of Parks and Wildlife Code, §§11.202, 11.203, 11.205, and Government Code, §2255.001.

The proposed new rules affect Parks and Wildlife Code, §§11.201 - 11.207.

§51.161. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Closely related nonprofit partner (CRNP)--A nonprofit partner that exists primarily for the purpose of a specific department property, facility, or program. Closely related nonprofit partners include, but are not limited to, friends groups associated with a specific department facility.

(2) Commission--The Texas Parks and Wildlife Commission.

(3) Department--Texas Parks and Wildlife Department.

(4) Donor--A person who makes a contribution to the department for which there is no consideration or expectation of consideration in return.

(5) Director--Executive director of the department.

(6) General nonprofit partner (GNP)--A nonprofit partner that is neither a closely-related nonprofit partner nor the official nonprofit partner.

(7) Gift--A donation of money or property other than volunteer time for which there is no consideration or expectation of consideration in return.

(8) Improvement--A permanent addition to real property which is in the nature of a fixture.

(9) IRS 990--United States Internal Revenue Service Form 990, Return of Organization Exempt from Tax.

(10) In-kind donation--A non-cash donation, such as services, personal property or real property.

(11) Local sponsorship--A campaign to raise funds in support of a department program that is intended to benefit a single department facility.

(12) Nonprofit entity--An incorporated entity that is exempt from federal taxation under §501(c) of the Internal Revenue Code of 1986 (Title 26, United States Code).

(13) Nonprofit partner (NP)--A nonprofit entity as defined by Parks and Wildlife Code, §11.201(1) that has been designated by the commission as a nonprofit partner of the department pursuant to Texas Parks and Wildlife Code, §11.202. "Nonprofit partners" include

general nonprofit partners, closely-related nonprofit partners and the official nonprofit partner.

(14) Official nonprofit partner (ONP)--An entity designated as the official nonprofit partner of the department by the commission in accordance with Parks and Wildlife Code, §11.205.

(15) Program--An activity, event or project undertaken by a nonprofit partner for the benefit of the department.

(16) Regional director--A department manager who reports directly to a department division director and is responsible for the management of the portion of a division covering a defined geographic area of the state.

(17) Sponsor--A person, corporation, company, or other organization that provides funds in support of a specific department project, program or event.

(18) Sponsorship--The payment of money, transfer of property, or performance of services by a person, corporation, company, or other organization with respect to which there is no arrangement or expectation of any substantial return benefit other than recognition or a non-substantial benefit.

(19) Statewide sponsorship--A sponsorship or campaign to raise funds in support of a department program that is intended to benefit more than a single department facility or is intended to reach the majority of the population of the state.

§51.162. Criteria and General Requirements.

(a) All NPs must meet the requirements and criteria of this subsection.

(1) In order to be considered a NP of the department, the nonprofit organization must be designated by the commission voting in a public meeting. The commission will designate an ONP, as necessary.

(2) In order to maintain a current list of all nonprofit entities associated with the department, the commission will seek to designate as a GNP all non-profit partners, other than CRNPs and the ONP, that have an agreement of any kind with the department, have a representative serving on a department or commission advisory committee, or otherwise have a relationship with the department.

(3) The commission may remove a nonprofit partner from the NP list.

(4) All NPs must carry out the fiscal, business, legal, and tax responsibilities of a nonprofit entity as required by state and federal law.

(5) All NPs must have obtained from the Internal Revenue Service a valid determination letter that it is an organization described in §501(c) of the Internal Revenue Code of 1986 (Title 26, United States Code), as amended. Such a letter must be obtained no later than 180 days after being designated by the commission as a NP.

(6) All NPs' work with the department must be consistent with the department's mission and goals.

(7) Upon dissolution, a NP may be required to dispose of funds raised for the benefit of the department in a way that will benefit the department, in accordance with applicable law.

(b) In addition to the requirements and criteria stated in subsection (a) of this section, CRNPs and the ONP must comply with the requirements and criteria of this subsection.

(1) CRNPs and the ONP must be incorporated in accordance with the Texas Nonprofit Corporation Act (Business Organizations Code, Chapter 22).

(2) Within 60 days of its designation as a nonprofit partner, each CRNP and the ONP must enter into an agreement with the department detailing the responsibilities and duties of the nonprofit partner and the department. Each CRNP and the ONP must maintain such an agreement with the department for as long as the entity is designated as a CRNP or the ONP. The agreement may also address the obligations of a CRNP or the ONP upon termination of the relationship with between the CRNP or ONP and the department, including termination resulting from the dissolution of the CRNP or the ONP.

(3) CRNPs and the ONP must promptly notify the department of any change in its legal or tax-exempt status.

§51.163. Best Practices (General).

(a) All NPs must comply with the general best practices prescribed in this subsection.

(1) NPs shall not hold or obligate department funds.

(2) NPs shall comply with all applicable rules, regulations, and laws, including all applicable laws regarding discrimination based on race, color, national origin, sex, age, and disability.

(3) NPs shall not use or authorize the use of department intellectual property, including trademarks, logos, name, or seal, without the express written agreement of the department.

(4) NPs shall not employ a department employee in a paid position or otherwise provide compensation or a direct personal benefit to a department employee. Provided, however, unless otherwise prohibited by law, benefits authorized by Penal Code, Chapter 36, are not prohibited by this subsection.

(5) NPs may use equipment, facilities, or services of employees of the department only in accordance with an agreement that provides for the payment of adequate compensation and/or identifies the benefit to the department for such use. Notwithstanding this subsection, a NP may use department facilities to the same extent and for the same fee as members of the public.

(b) In addition to subsection (a) of this section, CRNPs and the ONP must comply with the general best practices prescribed in this subsection.

(1) CRNPs and the ONP shall conduct business in a way that will ensure public access and transparency. As used in this subsection, "transparency" shall mean that the CRNP's and ONP's business practices and internal processes are conducted in a way that is open, clear, measurable, and verifiable.

(2) CRNPs and the ONP shall file with the department and make available to the public an annual report that includes a list of the primary activities undertaken during the previous year, a summary of significant achievements and challenges over the previous year, and other information requested by the department.

(3) Regardless of whether a CRNP or the ONP is required to file an IRS 990 with the Internal Revenue Service, each CRNP and the ONP must complete and file an IRS 990 with the department each year, regardless of income, and must make the IRS 990 available to the general public, upon request.

(4) CRNPs and the ONP shall file with the department its articles of incorporation, by-laws, and most recent financial statements, and any updates to these documents and shall make these documents available to the public, upon request.

(5) CRNPs and the ONP shall not engage in activities that would require it or a person acting on its behalf to register as a lobbyist under Texas law, Texas Government Code, Chapter 305. However, this subsection is not intended to restrict CRNPs and the ONP from

providing information to the legislature or to other elected or appointed officials.

(6) CRNPs and the ONP shall not donate funds to a political campaign or endorse a political candidate.

(7) CRNPs and the ONP shall notify the department of all meetings and allow a department representative to attend all meetings, including, but not limited to, meetings of its general membership, managing board, and committees. Meeting notices must be provided to the department sufficiently in advance of the meeting so that the department representative has ample opportunity to attend. Such notice may be provided by letter, email, or telephone.

(c) In addition to subsections (a) and (b) of this section, the ONP must comply with the general best practices prescribed in this subsection.

(1) The ONP must have an annual audit by an independent accounting firm and shall make the results of that audit available to the department.

(2) The ONP must maintain an adequate directors and officers liability insurance policy.

§51.164. Best Practices (Officers and Directors).

(a) All officers and directors of NPs must receive a copy of or a link to the department's Land and Water Resources Conservation and Recreation Plan.

(b) In addition to subsection (a) of this section, CRNPs and the ONP must comply with the best practices regarding officers and directors as prescribed in this section.

(1) CRNPs and the ONP must adopt and maintain a conflict of interest policy, which includes safeguards to prevent board members or their families from benefiting financially from any business decision of the CRNP or the ONP.

(2) CRNPs and the ONP shall ensure that any compensation paid to executives or managers is reasonable.

(3) CRNPs and the ONP shall not elect or designate or otherwise select a department employee as an officer or director, other than as a non-voting uncompensated representative of the department.

(4) CRNPs and the ONP shall hold regular meetings of its Board of Directors.

(5) CRNPs and the ONP shall ensure that each board member and/or director is fully informed of activities and shall provide the following information to new board members:

(A) articles of incorporation and by-laws;

(B) most recent financial statements;

(C) department rules on NPs and sponsorship; and

(D) current agreements with the department.

§51.165. Best Practices (Fundraising).

(a) All NPs must comply with the requirements of this subsection regarding fundraising.

(1) NPs may conduct fundraising to provide additional funds for department operations, to enhance department programs, to provide long-term endowments for department programs, to facilitate special projects, or otherwise support the department in carrying out its mission, but only as agreed in writing by the department in advance.

(2) NPs may undertake programs for the benefit of the department, so long as such programs are related to and supportive of the

department's mission and are agreed to in writing by the department in advance. A single agreement may cover multiple programs.

(3) NPs shall decline donations that require actions, including recognition, by the department for which the department has not given prior written consent.

(4) Funds accepted by a NP on behalf of or for the benefit of the department are to be managed as a reasonably prudent person would manage funds if acting on his or her own behalf and such funds are to be accounted for according to Generally Accepted Accounting Principles (GAAP).

(b) In addition to subsection (a) of this section, CRNPs must comply with the provisions of this subsection.

(1) All projects undertaken for the department by a CRNP must be related to and supportive of the facility, property, or program with which the CRNP is associated or must further the CRNP's mission related to the facility, property or program.

(2) All donations to the CRNP must benefit the facility, property, or program with which the CRNP is associated or must further the CRNP's mission related to the facility, property, or program.

(3) For purposes of this subsection, a donation for the purpose of defraying the CRNP's operating costs furthers the CRNP's mission related to the facility, property, or program.

(c) In addition to subsections (a) and (b) of this section, CRNPs and the ONP shall adopt financial procedures that govern acceptance of and access to funds raised for the benefit of the department.

(d) Nothing in this subchapter shall limit the ability of a NP to make an unrestricted cash donation to the department. Such a donation may be for a specific purpose or program.

(e) NPs, CRNPs and the ONP may work together towards a common fundraising goal for the benefit of the department, consistent with the requirements of this subchapter.

§51.166. Best Practices (Sponsorship).

(a) NPs may solicit and accept sponsorships for department programs, so long as the NP complies with the provisions of this subsection.

(1) All sponsorships of department programs and the level of sponsorship recognition provided by the department must have prior written approval of the department as set forth in this paragraph.

(A) A statewide sponsorship and the associated sponsorship recognition must have prior written approval by the director.

(B) A local sponsorship and the associated sponsorship recognition must have prior written approval by the regional director whose area of responsibility includes the facility, property or program to be supported by the local sponsorship.

(2) NPs shall not solicit or accept a sponsorship in support of a department program from:

(A) a person or entity that has been determined by the department to conflict with either the department's mission or legislative mandates;

(B) a person or entity that holds a commercial license issued by the department to the extent that the department is prohibited from accepting funds from such a person or entity under Parks and Wildlife Code, §11.026; or

(C) a person or entity that is in litigation with the department at the time of consideration.

(3) Sponsor recognition shall be limited as prescribed in this paragraph.

(A) Sponsor recognition shall be solely in the context of the department program that the sponsor has supported with a financial or in-kind contribution.

(B) Sponsor recognition shall be permitted only when the financial or in-kind contribution is greater than the costs associated with providing sponsor recognition.

(C) Sponsor recognition shall not include signage of any kind on state-owned motor vehicles or trailers that were purchased or are maintained with department funds.

(D) Sponsor recognition shall not overshadow the project, the purposes of the project, or the mission of the department or result in the role of the department being less prominent than that of the sponsor.

(4) In determining the level of sponsorship recognition to provide, the department will consider:

(A) the level of contribution as a percentage of the total funding required to execute or produce the program, event, or material;

(B) the level of contribution as a percentage of total sponsorship dollars received;

(C) the scope of exposure (e.g. statewide, regional, local, or a single location); and

(D) the duration of exposure (e.g. one day, one month or one year).

(5) Sponsorship recognition may not promote the sponsor's products, services, or facilities. This subsection does not prohibit the broadcast or display of the sponsor's logo or name and a reference to the sponsor's location.

(6) No officer or employee of the department shall act as the agent for any NP or donor in negotiating the terms or conditions of any agreement relating to the provision of funds, services, or property to the department by the NP or donor.

(b) Nothing in this subchapter shall limit the ability of a NP to make an unrestricted cash donation to the department when no sponsorship recognition is provided. Such a donation may be for a specific purpose or program.

§51.167. Department Procedures.

(a) The department will maintain and periodically update a list of GNPs and a separate list of CRNPs. This list will be made available to the public.

(b) The department will not hold or obligate NP funds or property.

(c) The ONP may reimburse department employees for legitimate, documented expenses. Additionally, the ONP may award scholarships to department employees from private, donor-directed sources, so long as there is a benefit to the department.

(d) All donations to the department of \$500 or more must be approved by commission, voting in public session.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2007.



CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

The Texas Parks and Wildlife Department (the department) proposes amendments to §§65.3, 65.9, 65.10, 65.25, 65.34, 65.42, 65.44, 65.64, 65.72, and 65.82, concerning the Statewide Hunting and Fishing Proclamation.

The proposed amendment to §65.3, concerning Definitions, would clarify terminology for the definitions of 'coastal waters boundary' and 'final processing,' and add definitions of 'circle hook,' 'charter vessel,' and 'headboat.' The current definition of the boundaries of the state's coastal waters in every instance refers to 'coastal water,' except for a single reference to 'saltwater.' To avoid confusion, the term should be consistent throughout the rule, so the reference to saltwater is being replaced. The current definition of 'final processing' does not reflect a statutory provision (Parks and Wildlife Code, §42.001(5)) that applies only to deer and antelope, giving the impression that the current definition applies to all wildlife resources. To prevent confusion, the proposed amendment would add the statutory definition for deer and antelope.

The proposed addition of definitions for 'circle hook,' 'charter vessel,' and 'headboat' defines those terms for the purposes of compliance with and enforcement of the proposed amendment to §65.72 to alter rules affecting the red snapper fishery. The definition of 'circle hook' is necessary because the department is proposing elsewhere in this rulemaking to prohibit all hooks other than the circle hook for the take of red snapper. Additionally, the provisions of the proposed amendment to §65.72 would incorporate the federal Individual Fishing Quota (IFQ) rules for the commercial take of red snapper. The IFQ is a form of limited access that assigns a fixed share of the total allowable catch to each user of the resource. The percentage share is based on historical catches in a particular time period. With each landing, poundage from the quota is debited from the individual's IFQ account. The IFQ program is mandated by federal law for all vessels and persons engaged in the commercial harvest of red snapper in federal waters. The incorporation of the federal rules in the Texas Administrative Code would allow the department to prosecute violations of the rules in state jurisdictions. Since the federal IFQ system contains provisions governing vessels (headboats and charter vessels) that simultaneously engage in both commercial and recreational fishing, those terms must be defined in order for the regulated community to ascertain the applicability of the rules to their various activities.

The proposed amendment to §65.3 also would update the reference to the title of the American Fisheries Society publication used to determine fish names. The new title of that publication is "Common and Scientific Names of Fishes from the United States, Canada, and Mexico."

The proposed amendment to §65.9, concerning Open Seasons: General Rules, would eliminate paragraph (d), which by its own

terms ceased effect on September 1, 2003 and is thus no longer necessary.

The proposed amendment to §65.10(b) would have the effect of eliminating the 'double tagging' requirement for mule deer taken under an antlerless mule deer permit. In previous rulemakings, the department eliminated 'double tagging' for white-tailed deer, which was caused by overlapping regulatory requirements that obligated hunters to provide the same information on multiple tags and documents. With the expansion of the managed lands permit program to encompass mule deer, the department inadvertently neglected to provide for the elimination of 'double tagging' of mule deer. The proposed amendment is necessary to streamline the tagging process and make it consistent for all deer taken by special permit.

The proposed amendment to §65.10(f) would require a taxidermist to retain a wildlife resource document (WRD) or tag for each deer or turkey in possession for a period of at least two years following the return of the specimen to the owner or, if the owner abandons it, the sale for recovery of the cost of taxidermy. Under Parks and Wildlife Code, §§42.018 and 42.0185, the tagging requirements for deer or turkey allow for the use of a WRD in lieu of a tag under certain circumstances, including when deer and turkey are left with a taxidermist. Under §42.0177, the commission may modify or eliminate those requirements. By statute (Parks and Wildlife Code, §62.023), a taxidermist may sell unclaimed specimens to recover the cost of the taxidermy, and is required to retain the WRD or tag for a period of two years from the date the taxidermy was completed. The two-year time period is the statute of limitations for a Class C misdemeanor. By starting the two-year retention period from the time a specimen is returned to the owner or sold (rather than when the taxidermy is completed), the department will always have the maximum amount of time to conduct an investigation when it is necessary to determine whether deer or turkey taken to a taxidermist have been lawfully taken.

The proposed amendment to §65.25, concerning Wildlife Management Plan (WMP), would alter the provisions of the section applicable to lesser prairie chicken and create additional provisions concerning javelina. With respect to lesser prairie chicken, the proposed amendment to subsection (b) would reduce the number of required management practices from five to three, increase the maximum designated harvest from up to five percent of the estimated lesser prairie chicken population on the property to up to 10 percent of that estimate, and add a requirement for a harvest log to be maintained on the property. The intent of the proposed regulation change is to give field staff more flexibility to encourage landowners to participate in management programs for lesser prairie chicken. The department has determined that most landowners interested in the program are already conducting some or many practices that are beneficial to lesser prairie chicken; therefore, the number of required practices may be reduced. Because of the breeding behavior of lesser prairie chickens and their large home ranges, habitat components for any given population are typically provided by several landowners. For example, nesting and feeding areas may be on one property, while the breeding ground is on another. Variability in property sizes can make management challenging, especially when birds are spending only a small portion of their time on a given habitat component, such as the breeding ground. Increasing the harvest rate will allow field biologists to make issuance of harvest quotas for lesser prairie chicken more equitable for landowners in the program. Harvest at or below 10% of the estimated total population will not result in depletion of the resource, since

the post-harvest reproductive potential is more than sufficient to offset or replace harvest mortality. The harvest log requirement is necessary to maintain a record of harvest so the department can determine compliance with harvest quotas. The proposed amendment also would alter subsection (b)(1)(E) by inserting the word 'quota' to clarify that the harvest recommendation is in fact a limit.

With respect to javelina, the proposed amendment to §65.25 would add a new subsection (c) to create a mechanism to allow the harvest of javelina by quota on individual properties under a department-approved management plan. Javelina are common across southern and western Texas, but are not uniformly distributed over their natural range. Although department data indicate a possible downward trend across their range, javelina populations are stable or thriving where habitat is good, particularly along drainages where there is abundant vegetation and cover. Thus, in many areas javelina exist in densities sufficient to sustain additional hunting pressure in excess of the current personal bag and possession limits, provided the total harvest does not cause local populations to fall below their immediate recuperative potential. The proposed amendment would allow the department to establish an annual harvest quota for javelina on a given property and the normal bag and possession limits would no longer apply. The department also would require a habitat evaluation, habitat management practices, a harvest log, and population and harvest data for javelina on each property where javelina are to be hunted. By establishing a finite, resource-dependent harvest quota, the department is assured that harvest will not exceed biologically acceptable levels. By collecting valuable biological information on a property-by-property basis, the department will be able to acquire useful biological data concerning javelina populations.

The proposed amendment to §65.34, concerning Managed Lands Deer Permits (MLDP)--Mule Deer, would allow the take of mule deer by MLDP during the archery-only open season. When the MLDP program was expanded to include mule deer, the department inadvertently did not provide for an archery-only open season on properties receiving mule deer MLDPs. Under the MLDP program, a participating property receives a finite harvest quota and a specific time period in which to harvest the specified number of animals. The implementation of an archery season will not be additive to the harvest quota. The amendment is necessary because there is no biological reason not to provide an archery season for mule deer on properties participating in the MLDP program for mule deer.

The proposed amendment to §65.42, concerning Deer, would address several issues. The proposed amendment to subsection (a) would clarify that no person is authorized to exceed a county bag limit except as provided in the section. The proposed amendment to subsection (a)(5) would allow a person to who takes an antlerless mule deer under an antlerless mule deer permit to tag the deer with either a tag from the person's hunting license or the antlerless mule deer permit. The amendment is necessary to prevent hunters from being inconvenienced by "double tagging," having to tag a deer with multiple tags bearing the same information.

The proposed amendment to §65.42(b)(17) and (c)(5) would extend the statewide archery-only season by five days. Historically, the archery season has always closed the Sunday before the opening of the general season. The proposed change would eliminate the current five-day gap between the end of the archery season and the beginning of the general season. The amend-

ment is necessary to follow the commission's policy of providing the maximum hunting opportunity possible.

The proposed amendment to §65.42(b)(5)-(9) would clarify the rules concerning the take of buck deer in counties where antler restrictions are in effect. In those counties, a lawful buck is defined as a buck that has an inside antler spread of 13 inches or greater or a buck that has at least one unbranched antler. A hunter may take two bucks, but only one of them may have an inside antler spread of 13 inches or greater. The amendment is necessary because the current rule does not provide for the instance in which a hunter kills a spike-buck deer with an inside spread of greater than 13 inches. The proposed amendment would make it clear that the antler spread of a buck with an unbranched antler is irrelevant.

The proposed amendment to §65.42(b)(5)(13)(D) would clarify that antlerless deer may be taken in without a permit anywhere Grayson County during the 'doe days' in effect in the county.

The proposed amendment to §65.44, concerning Javelina: Open Seasons and Annual Bag limits, would insert clarifying language to prevent conflicts with the proposed amendment to §65.25.

The proposed amendment to §65.64, concerning Turkey, would alter subsection (b)(3) to change the spring season dates for Rio Grande turkey. In 2005, the department lengthened the season and created a uniform opening day in all counties. In analyzing the results of that change, the department has determined that additional hunting opportunity can be provided without resulting in depletion or waste of the resource. The proposed amendment would start the season approximately two weeks earlier (the Saturday closest to March 18) in counties in the southern Edwards Plateau and South Texas, and one week later in those counties in the northern Edwards Plateau, north Texas, and the Rolling Plains. The proposed amendment would allow hunters to take advantage of peak gobbling activity, which often varies annually depending on weather conditions. Since the spring Rio Grande hunting season is limited to only male birds (gobblers) there is little harm to turkey production, unless hunting activities disrupt the breeding behavior of the turkeys. Varying the opening date will allow hunters to be in the field when peak gobbling occurs. The amendment is necessary in order to follow the commission's policy of providing the maximum opportunity possible within the tenets of sound biological management. In selecting the counties where the season would open in March, the department included three counties (Guadalupe, DeWitt, and Victoria) where the bag limit is currently one gobbler during the spring season. In 1996, the department reduced the spring season bag limit in those counties due to population concerns. The department has determined that the populations in those counties are able to withstand additional harvest.

The proposed amendment also would extend the statewide archery-only season for turkey by five days, for the same reasons discussed for the extension of the archery season for deer.

The proposed amendment to §65.72, concerning Fish, consists of a number of actions. The proposed amendment would alter subsection (a) to exempt persons engaged in offshore aquaculture from the size and bag limits established for the recreational fishery. The action is necessary to clarify that fish being reared in lawful aquaculture facilities would be allowed to be possessed and landed without violating the recreational limits for those species. Current regulations would not allow the possession of cultured species in excess of bag or length limits.

The proposed amendment to §65.72(a) also would allow the use of catfish heads as bait in crab traps by commercial crab fishermen, provided the catfish were obtained from a permitted aquaculturist in the United States. The purpose of the prohibition of the use of game fish for bait is to prevent the use of undersized game fish as bait. However, catfish heads are good bait for crab traps, and aquaculture facilities typically have no use for catfish heads following harvest. By restricting the use of catfish to heads only and requiring crab fisherman who do use them to be able to document their origin, the department believes protection for game species will not be affected.

The proposed amendment to §65.72(a) also would prohibit the use of any vessel to harass or harrÿ fish. The current rule prohibits the use of airboats or jet-driven devices to harass or harrÿ fish. At the time the current rule was adopted, only certain types of vessels were capable of traversing water shallow enough to allow the herding of fish; however, newer hull and engine designs allow many vessels to access very shallow water and occurrences of this kind of activity are growing. Fish that are artificially concentrated into small areas are more susceptible to anglers than those that are not concentrated, despite otherwise effective restrictions. Under Parks and Wildlife Code, §61.002, the purpose of the chapter is to provide a comprehensive method for the conservation of an ample supply of wildlife resources on a statewide basis to insure reasonable and equitable enjoyment of the privileges of ownership and pursuit of wildlife resources. Harrÿing fish with vessels is considered an artificial method of concentration that deprives other anglers of the opportunity for equitable enjoyment of the resource.

The proposed amendment to §65.72(a) also would incorporate federal regulations governing the Individual Fishing Quota program in state regulations. Federal rules require a federal permit for the harvest of Gulf of Mexico Reef Fish and a federal red snapper Individual Fishing Quota (IFQ) vessel endorsement. This change is necessary to allow enforcement of these requirements in state as well as federal court and to insure that fish landed in Texas are not in contravention of federal limits.

The proposed amendment to §65.72 would alter the provisions of subsection (b)(2)(C) to increase the size limit for sheepshead from 12 inches to 15 inches over a three-year period. The current size limit was implemented 15 years ago and was selected to maintain consistency with other, similar size limits. Recent biological research suggests that the 15-inch limit would provide better protection for sheepshead, allowing a higher percentage of fish to reach sexual maturity and age by the time of first spawn. Since the growth rate of sheepshead is relatively slow, increasing the size limit by one inch per year balances greater protection via size limits against the impacts of size limits on recreational landings. Increasing the size limit by one inch per year over the next three years will achieve the protection needed and minimize the impact to recreational landings. The proposed amendment is necessary to ensure a plentiful supply of this popular sport fish.

The proposed amendment to §65.72(b)(2)(C) also would change the size limit for red snapper from 15 to 13 inches for all anglers. This change is being considered to be consistent with federal regulations that apply to fish legally caught in the Exclusive Economic Zone of the Gulf of Mexico and then landed in Texas. Also, anyone fishing for red snapper will be required to use circle hooks. The restriction is intended to reduce hooking mortality in undersized fish.

The proposed amendment to §65.72(b)(2)(C) also would implement a catch-and-release fishery for tarpon. Under current rules

there is a bag limit of one tarpon of 80 inches or longer per person per year. Tarpon become reproductively mature at around 10 years of age (approximately 4 feet in length), which is extremely old for most fish species. Also, while individual females are relative fecund, the survival rate of young is poor compared to other species of saltwater fish because its unusual life history involves multiple larval stages, all susceptible to predation. Individuals, record-keeping trophy groups, and even some fishing tournaments have moved towards systems that rely on measurements of fish (length and/or girth) to determine the weight of the fish. The fish are released immediately after measurement. The proposed amendment will create a similar catch and release fishery for tarpon in Texas and reduce the need for even the very limited harvest now allowed.

The proposed amendment to §65.72(b)(2)(D) would increase the possession limit for striped bass on Lake Texoma from 10 to 20. The proposed change would reduce angler confusion with respect to fish landed in Texas and would create a more standardized regulation with Oklahoma, without resulting in any negative impacts on the resource or the angling community. The current possession limit on Lake Texoma (10 fish) is identical to the daily bag limit, which differs from the statewide regulations that generally establish the possession limit as twice the daily bag limit. The Oklahoma possession limit is 20 fish, with special exceptions.

The proposed amendment to §65.72(b)(2)(D) also would regionalize spotted seatrout regulations by reducing bag and possession limits for spotted seatrout in the lower Laguna Madre (LLM). The proposed amendment would lower the daily bag limit in the LLM from 10 to 5, and the possession limit would be the same as the daily bag limit. Surveys and modeling have suggested a relatively long downward trend in overall abundance of spotted seatrout and a decrease in the spawning stock biomass in the LLM. Population size in this bay system is at or slightly below those found elsewhere along the coast, but it is significantly lower than in the recent past. Based on bag seine sampling in the LLM there appears to be constant recruitment into the LLM fishery. Gill-net sampling by the department indicates that while the same or even slightly greater abundance of fish are reaching the size classes that are susceptible to sampling with the gill nets (based on gear selectivity), a smaller proportion of those fish are reaching the larger size classes as compared to previous time periods. These larger size classes of fish are being harvested out of the system and this is believed to be impacting the reproductive potential of the population. Modeling has indicated a substantial improvement would be possible in a relatively short period of time if these trends were to be addressed now. This proposal is necessary to stop and reverse current total abundance and spawning biomass trends in the LLM. The proposed amendment also would insert a statement in §65.72(b)(2)(C) to clarify that the provisions of subparagraph (D) of that paragraph are exceptions to the provisions of subparagraph (C).

The proposed amendment also would extend for one year the provision allowing the harvest of catfish by means of lawful archery equipment and crossbow. The proposed amendment is necessary because the department is still in the process of evaluating the impact of the regulation on catfish populations.

The proposed amendment to §65.82 would preclude taking or retaining diamondback terrapin, except by persons holding commercial nongame, scientific, educational, or zoological permits. The impact of direct or incidental take and accidental mortality on diamondback terrapins is a concern, and research indicates that

the species is in a declining population trend across much of its range. The take by special permit only will allow the department to monitor trends affecting the population and take additional action in the future if warranted.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the dispensation of the agency's statutory duty to protect and conserve the wildlife resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rules as proposed, except as noted. The economic impact of hunting and fishing in Texas, particularly in rural areas of the state, is significant. The Survey of Fishing, Hunting, and Wildlife-related Recreation, conducted annually since 1955 by the U.S. Fish and Wildlife Service, estimates that approximately \$3.5 billion was spent by hunters and anglers in Texas in 2001, the last year for which survey data is available. Of that total, nearly \$1.5 billion was spent on food, lodging, transportation, and fuel; \$1.3 billion was spent on equipment; and \$366 million was spent on licenses, permits, and fees paid to landowners for hunting rights. From these data it is readily apparent that hunting and fishing represent a significant economic impact to many individuals and types of businesses in the state.

Typically, the department's annual changes to the regulations governing recreational fish and wildlife use are characterized by minor alterations, usually affecting bag limits, bag composition, season lengths, or provisions affecting licenses or permits. In assessing the effect of the proposed amendments on small businesses, microbusinesses, and persons required to comply, the department has made the assumption that the majority of economic influence exerted by fish and wildlife regulations is a function of the presence or absence of opportunity, which is directly tied to the biological parameters (availability, viability, surplus, etc.) that determine whether or not the commission is able to provide an open season under the requirements of Parks and Wildlife Code, Chapter 61.

In order to assess these impacts, the department compared the results of the 2001 Fish and Wildlife Service survey with previous survey results. A comparison employing a 90 percent confidence interval around survey estimates from 1991 to 2001 reveals that economic activity (in adjusted dollars) surrounding hunting and angling has remained statistically stable during that time, the notable exception being an approximately 46% increase in travel expenses related to hunting. This comparison, when viewed against the backdrop of continual but slight changes to regulations, would seem to indicate that minor fluctuations in the regulations do not, in and of themselves, result in significant economic impacts to any type of business. While this comparison indicates little or no change at the macro (statewide level) there could be changes at the micro (local) level, as addressed elsewhere in this preamble.

However, there are four proposed amendments that warrant clarification: the requirement of the use of circle hooks when taking red snapper by pole and line, the implementation of the federal regulations governing the Individual Fishing Quota (IFQ), the reduction in the minimum size limit for red snapper, and the reduction in bag and possession limits for spotted seatrout in the lower Laguna Madre.

The proposed amendment to §65.72(b)(2)(c) would require pole-and-line anglers to use circle hooks when fishing for red snapper. It must be noted that this is a cost routinely borne by the angler when replacing old, worn, or damaged tackle. Although there are fishermen who currently do not use circle hooks who will have to purchase them to comply with the proposed amendment, the expense is expected to be between \$.17 and \$1 per hook, depending on the quality and quantity purchased.

The proposed amendment to §65.62(b) would require commercial fishermen to comply with federal IFQ requirements when landing red snapper in Texas. Under existing federal law, a commercial fisherman may not land red snapper in Texas unless that person is in compliance with the federal IFQ requirements. The proposed amendment does not impose additional regulatory requirements or costs on the regulated community. The federal regulations are being incorporated into the Texas Administrative Code to allow the department to prosecute violations in state jurisdictions.

The proposed amendment to §65.72(b)(2) would decrease the minimum size limit for red snapper from 15 inches to 13 inches for both recreational and commercial fisherman. The department believes that the change, if adopted, will actually make a greater number of fish available for both recreational and commercial harvest. The reduction in length is intended to reduce the waste of fish that are released and do not survive. With respect to impact upon the commercial fishery, the new size limit is anticipated to benefit the overall biomass in the fishery and benefit the rebuilding of the stock. The National Marine Fisheries Service assessment of the stock indicates that the reduction will not create the same benefits to the overall population for the recreational fishery. However, by reducing the size limits simultaneously there will be fewer conflicts between the recreational and commercial fishery. In addition, through the use of circle hooks and angler education, the benefits of the 13-inch minimum size limit on the recreational sector may be greater than anticipated.

The proposed amendment to §65.72(b) would reduce the bag limit on spotted seatrout in the lower Laguna Madre (LLM) from 10 fish to 5 fish and would make the possession limit identical to the bag limit. The amendment, if adopted, might influence an angler's choice of fishing location or the number of times an angler fishes in a particular location. Anglers who traditionally fish the LLM might decide to take fewer trips to the LLM, fish in other bay systems, fish in fresh water, or possibly curtail all fishing activities over the next five years. While this type of behavior shift does not have a direct cost of compliance to the angler it does equate to a change in the expected value (satisfaction) that the individual angler received from their fishing experiences. The impact of changing fishing behavior or the shifting of fishing pressure could have an economic impact on fishing guides, bait dealers, tackle businesses, hotels, restaurants and other small businesses directly associated with angler tourism in the local area of the LLM; however, this secondary impact is not a direct cost of compliance and will depend on the number of anglers that choose to alter or shift their current fishing behavior.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies. The proposed amendment to §65.72(b) that would reduce the bag limit for spotted seatrout may have an indirect impact on the local economies surrounding the lower Laguna Madre, but as explained earlier in this preamble, these effects, if they occur, would be secondary impacts of the rulemaking, chiefly in the form of individual decisions by anglers to increase, decrease, or maintain their levels of angling activities based on the perception of the rule's effect on angling satisfaction. The rule in and of itself imposes no direct effects on local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted by phone (area code 512) or e-mail to Robert Macdonald (Wildlife 389-4775; e-mail: robert.macdonald@tpwd.state.tx.us), Ken Kurzawski (Inland Fisheries 389-4591; e-mail: ken.kurzawski@tpwd.state.tx.us), Jerry Cooke (Coastal Fisheries 389-4492; e-mail: jerry.cooke@tpwd.state.tx.us), David Sinclair (Wildlife Enforcement 389-4854; e-mail: david.sinclair@tpwd.state.tx.us), or Bill Robinson (Fisheries Enforcement 389-4628; e-mail: bill.robinson@tpwd.state.tx.us), Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 or 1-800-792-1112.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.3, 65.9, 65.10, 65.25, 65.34

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; §42.017, which authorizes the commission to modify or eliminate the tagging requirements of §§42.018, 42.0185, or 42.020, or other similar tagging requirements in Chapter 42; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendments affect Parks and Wildlife Code, Chapters 42, 61, and 67.

§65.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this chapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) **Agent**--A person authorized by a landowner to act on behalf of the landowner. For the purposes of this chapter, the use of the term "landowner" also includes the landowner's agent.

(2) **Alligator gig**--A pole or staff equipped with at least one of the following:

- (A) immovable prongs;
- (B) two or more spring-loaded grasping arms; or
- (C) a detachable head.

(3) **Alligator hide tag (hide tag)**--A department-issued tag required by federal law pursuant to the Convention on International Trade in Endangered Species (CITES) to be affixed to all alligators taken in the state. All alligator hide tags issued by the department are CITES tags.

(4) **Annual bag limit**--The quantity of a species of a wildlife resource that may be taken from September 1 of one year to August 31 of the following year.

(5) **Antlerless deer**--A deer having no hardened antler protruding through the skin.

(6) **Antler point**--A projection that extends at least one inch from the edge of a main beam or another tine. The tip of a main beam is also a point.

(7) **Artificial lure**--Any lure (including flies) with hook or hooks attached that is man-made and is used as a bait while fishing.

(8) **Bait**--Something used to lure any wildlife resource.

(9) **Baited area**--Any area where minerals, vegetative material or any other food substances are placed so as to lure a wildlife resource to, on, or over that area.

(10) **Bearded hen**--A female turkey possessing a clearly visible beard protruding through the feathers of the breast.

(11) **Buck deer**--A deer having a hardened antler protruding through the skin.

(12) **Cast net**--A net which can be hand-thrown over an area.

(13) **Charter Vessel**--A vessel less than 100 gross tons that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a commercial permit is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

(14) **Circle hook**--a hook originally designed and manufactured so that the point of the hook is turned perpendicularly back toward the shank of the hook to form a generally circular or oval shape.

(15) **[(13)] Coastal waters boundary**--All public waters east and south of the following boundary are considered saltwater[coastal waters]: Beginning at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (F.M. Road 1847) in Brownsville, thence northward along F.M. Road 1847 to the junction of F.M. Road 106 east of Rio Hondo, thence westward along F.M. Road 106 to the junction of F.M. Road 508 in Rio Hondo, thence northward along F.M. Road 508 to the junction of F.M. Road 1420, thence northward along F.M. Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of the Aransas River south of Woodsboro, thence eastward along the south shore of the Aransas River to the junction of the Aransas River Road at the Bonnie View boat ramp; thence northward along the Aransas River Road to the junction of F.M. Road 629; thence northward along F.M. Road 629 to the junction of F.M. Road 136; thence eastward along F.M. Road 136 to the junction of F.M. Road 2678; then northward along F.M. Road 2678 to the junction of F.M. Road 774 in

Refugio, thence eastward along F.M. Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northwestward along State Highway 185 to the junction of F.M. Road 616 in Bloomington, thence northeastward along F.M. Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of F.M. Road 521 north of Palacios, thence northeastward along F.M. Road 521 to the junction of State Highway 36 south of Brazoria, thence southward along State Highway 36 to the junction of F.M. Road 2004, thence northward along F.M. Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the junction of State Highway 73 in Winnie, thence eastward along State Highway 73 to the junction of U.S. Highway 287 in Port Arthur, thence northwestward along U.S. Highway 287 to the junction of Interstate Highway 10 in Beaumont, thence eastward along Interstate Highway 10 to the Louisiana State Line. The waters of Spindletop Bayou inland from the concrete dam at Russels Landing on Spindletop Bayou in Jefferson County; public waters north of the dam on Lake Anahuac in Chambers County; the waters of Taylor Bayou and Big Hill Bayou inland from the saltwater locks on Taylor Bayou in Jefferson County; Lakeview City Park Lake, West Guth Park Pond, and Waldron Park Pond in Nueces County; Galveston County Reservoir and Galveston State Park ponds #1-7 in Galveston County; Lake Burke-Crenshaw and Lake Nassau in Harris County; Fort Brown Resaca, Resaca de la Guerra, Resaca de la Palma, Resaca de los Cuates, Resaca de los Fresnos, Resaca Rancho Viejo, and Town Resaca in Cameron County; and Little Chocolate Bayou Park Ponds #1 and #2 in Calhoun County are not considered coastal waters for purposes of this subchapter.

(16) [(14)] Community fishing lake--All public impoundments 75 acres or smaller located totally within an incorporated city limits or a public park, and all impoundments of any size lying totally within the boundaries of a state park.

(17) [(15)] Crab line--A baited line with no hook attached.

(18) [(16)] Daily bag limit--The quantity of a species of a wildlife resource that may be lawfully taken in one day.

(19) [(17)] Day--A 24-hour period of time that begins at midnight and ends at midnight.

(20) [(18)] Deer population data--Results derived from deer population surveys and/or from systematic data analysis of density or herd health indicators, such as browse surveys or other scientifically acceptable data, that function as direct or indirect indicators of population density.

(21) [(19)] Dip net--A mesh bag suspended from a frame attached to a handle.

(22) [(20)] Final processing--the cleaning of a dead wildlife resource for cooking or storage purposes. For a deer or antelope carcass, the term includes the processing of the animal more than by quartering.

(23) [(21)] Fish--

(A) Game fish--Blue catfish, blue marlin, broadbill swordfish, brown trout, channel catfish, cobia, crappie (black and white), flathead catfish, Guadalupe bass, king mackerel, largemouth bass, longbill spearfish, pickerel, red drum, rainbow trout, sailfish, sauger, sharks, smallmouth bass, snook, Spanish mackerel, spotted bass, spotted seatrout, striped bass, tarpon, tripletail, wahoo, walleye,

white bass, white marlin, yellow bass, and hybrids or subspecies of the species listed in this subparagraph.

(B) Non-game fish--All species not listed as game fish, except endangered and threatened fish, which are defined and regulated under separate proclamations.

(24) [(22)] Fishing--Taking or attempting to take aquatic animal life by any means.

(25) [(23)] Fish length--That straight-line measurement (while the fish is lying on its side) from the tip of the snout (jaw closed) to the extreme tip of the tail when the tail is squeezed together or rotated to produce the maximum overall length.

(26) [(24)] Fish species names--The names of fishes are those prescribed by the American Fisheries Society in the most recent edition of "A List of Common and Scientific Names of Fishes from [of] The United States, [and] Canada and Mexico."

(27) [(25)] Fishing guide--a person who, for compensation, accompanies, assists, or transports a person or persons engaged in fishing in the water of this state.

(28) [(26)] Fishing guide deck hand--a person in the employ of a fishing guide who assists in operating a boat for compensation to accompany or to transport a person or persons engaged in fishing in the water of this state.

(29) [(27)] Folding panel trap--a metallic or non-metallic mesh trap, the side panels hinged to fold flat when not in use, and suspended in the water by multiple lines.

(30) [(28)] Fully automatic firearm--Any firearm that is capable of firing more than one cartridge in succession by a single function of the trigger.

(31) [(29)] Gaff--Any hand-held pole with a hook attached directly to the pole.

(32) [(30)] Gear tag--A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible, contain the name and address of the person using the device, and, except for saltwater trotlines and crab traps, the date the device was set out.

(33) [(31)] Gig--Any hand-held shaft with single or multiple points.

(34) Headboat--A vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire. A headboat with a commercial vessel permit is considered to be operating as a headboat when it carries a passenger who pays a fee or, in the case of persons aboard fishing for or possessing coastal migratory fish or Gulf reef fish, when there are more than three persons aboard, including operator and crew.

(35) [(32)] Jug line--A fishing line with five or less hooks tied to a free-floating device.

(36) [(33)] Lawful archery equipment--Longbow, recurved bow, and compound bow.

(37) [(34)] License year--The period of time for which an annual hunting or fishing license is valid.

(38) [(35)] Muzzleloader--Any firearm that is loaded only through the muzzle.

(39) [(36)] Natural bait--A whole or cut-up portion of a fish or shellfish or a whole or cut-up portion of plant material in its natural state, provided that none of these may be altered beyond cutting into portions.

(40) [(37)] Permanent residence--One's principal or ordinary home or dwelling place. This does not include a temporary abode or dwelling such as a hunting/fishing club, or any club house, cabin, tent, or trailer house used as a hunting/fishing club, or any hotel, motel, or rooming house used during a hunting, fishing, pleasure, or business trip.

(41) [(38)] Pole and line--A line with hook, attached to a pole. This gear includes rod and reel.

(42) [(39)] Possession limit--The maximum number of a wildlife resource that may be lawfully possessed at one time.

(43) [(40)] Purse seine (net)--A net with flotation on the corkline adequate to support the net in open water without touching bottom, with a rope or wire cable strung through rings attached along the bottom edge to close the bottom of the net.

(44) [(41)] Sail line--A type of trotline with one end of the main line fixed on the shore, the other end of the main line attached to a wind-powered floating device or sail.

(45) [(42)] Sand Pump--A self-contained, hand-held, hand-operated suction device used to remove and capture Callianassid ghost shrimp (*Callichirus islagrande*, formerly *Callianassa islagrande*) from their burrows.

(46) [(43)] Seine--A section of non-metallic mesh webbing, the top edge buoyed upwards by a floatline and the bottom edge weighted.

(47) [(44)] Silencer or sound-suppressing device--Any device that reduces the normal noise level created when the firearm is discharged or fired.

(48) [(45)] Spear--Any shaft with single or multiple points, barbed or barbless, which may be propelled by any means, but does not include arrows.

(49) [(46)] Spear gun--Any hand-operated device designed and used for propelling a spear, but does not include the crossbow.

(50) [(47)] Spike-buck deer--A buck deer with no antler having more than one point.

(51) [(48)] Throwline--A fishing line with five or less hooks and with one end attached to a permanent fixture. Components of a throwline may also include swivels, snaps, rubber and rigid support structures.

(52) [(49)] Trap--A rigid device of various designs and dimensions used to entrap aquatic life.

(53) [(50)] Trawl--A bag-shaped net which is dragged along the bottom or through the water to catch aquatic life.

(54) [(51)] Trotline--A nonmetallic main fishing line with more than five hooks attached and with each end attached to a fixture.

(55) [(52)] Umbrella net--A non-metallic mesh net that is suspended horizontally in the water by multiple lines attached to a rigid frame.

(56) [(53)] Unbranched antler--An antler having no more than one antler point.

(57) [(54)] Upper-limb disability--A permanent loss of the use of fingers, hand or arm in a manner that renders a person incapable of using a longbow, compound bow or recurved bow.

(58) [(55)] Wildlife resources--Alligators, all game animals, all game birds, and aquatic animal life.

(59) [(56)] Wounded deer--A deer leaving a blood trail.

§65.9. Open Seasons: General Rules.

(a) There is no open season on game animals or game birds on public roads and highways or in the right-of-way of public roads and highways.

(b) No antlerless deer permit is required to take an antlerless deer during the archery-only open season, except on lands for which Managed Lands Deer permits have been issued.

(c) The hunting of roosting turkey is unlawful.

[(d) There is no open season on game animals or game birds in any state-owned riverbed in Dimmit, Uvalde, and Zavala counties. The provisions of this subsection cease effect on September 1, 2003.]

§65.10. Possession of Wildlife Resources.

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's permanent residence and is finally processed.

(b) A person who lawfully takes a deer is exempt from the tagging requirements of Parks and Wildlife Code, §42.018 if the deer is taken:

(1) under the provisions of §65.26 of this title (relating to Managed Lands Deer Permits (MLDP)--White-tailed Deer);

(2) under the provisions of §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)--Mule Deer);

(3) under the provisions of §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(4) under an antlerless mule deer permit issued under §65.32 of this title (relating to Antlerless Mule Deer Permits);

(5) [(4)] by special permit under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation);

(6) [(5)] on department-leased lands under the provisions of Parks and Wildlife Code, §11.0272;

(7) [(6)] by special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program; or

(8) [(7)] under the provisions of §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits).

(c) A person who kills a bird or animal under circumstances that require the bird or animal to be tagged with a tag from the person's hunting license shall immediately attach a properly executed tag to the bird or animal.

(d) Proof of sex must remain with certain wildlife resources until the wildlife resource reaches either the possessor's permanent residence or a cold storage/processing facility and is finally processed. Proof of sex is as follows:

(1) turkey (in a county where the bag composition is restricted to gobblers and/or bearded hens):

(A) male turkey:

(i) one leg, including the spur, attached to the bird; or

(ii) the bird, accompanied by a patch of skin with breast feathers and beard attached.

(B) female turkey taken during the fall season: the bird, accompanied by a patch of skin with breast feathers and beard attached.

(2) deer:

(A) buck: the head, with antlers still attached;

(B) antlerless: the head;

(3) antelope: the unskinned head; and

(4) pheasant: one leg, including the spur, attached to the bird or the entire plumage attached to the bird.

(e) In lieu of proof of sex, the person who killed the wildlife resource may:

(1) obtain a receipt from a taxidermist or a signed statement from the landowner, containing the following information:

(A) the name of person who killed the wildlife resource;

(B) the date the wildlife resource was killed;

(C) one of the following, as applicable:

(i) whether the deer was antlered or antlerless;

(ii) the sex of the antelope;

(iii) the sex of the turkey and whether a beard was attached; or

(iv) the sex of the pheasant; or

(2) if the deer is to be tested by the department for chronic wasting disease, obtain a department-issued receipt (PWD 905).

(f) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document from the person who killed or caught the wildlife resource. A wildlife resource may be possessed without a WRD by the person who took the wildlife resource, provided the person is in compliance with all other applicable provisions of this subchapter and the Parks and Wildlife Code.

(1) For deer, turkey, or antelope, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches either the possessor's permanent residence or a cold storage/processing facility and is finally processed.

(2) For all other wildlife resources, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches the possessor's permanent residence and is finally processed.

(3) The wildlife resource document must contain the following information:

(A) the name, signature, address, and hunting or fishing license number, as required, of the person who killed or caught the wildlife resource;

(B) the name of the person receiving the wildlife resource;

(C) a description of the wildlife resource (number and type of species or parts);

(D) the date the wildlife resource was killed or caught; and

(E) the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county).

(4) A taxidermist who accepts a deer or turkey shall retain the wildlife resource document or tag accompanying each deer or turkey for a period of two years following the return of the resource to the owner or the sale of the resource under the provisions of Parks and Wildlife Code, §62.023.

(g) It is a defense to prosecution if the person receiving the wildlife resource does not exceed any possession limit or possesses a wildlife resource or a part of a wildlife resource that is required to be tagged if the wildlife resource or part of the wildlife resource is tagged.

(h) The identification requirements for desert bighorn sheep skulls are as follows.

(1) No person may possess the skull of a desert bighorn ram in this state unless:

(A) one horn has been marked with a department identification plug by a department representative; or

(B) the person also possesses evidence of lawful take in the state or country where the ram was killed.

(2) A person may possess the skull and horns of a desert bighorn ram found dead in the wild, provided:

(A) the person did not cause or participate in the death of the ram;

(B) the person notifies a department biologist or game warden within 48 hours of discovering the dead ram and arranges for marking with a department identification plug by a department representative; and

(C) the landowner on whose property the skull was found signs an affidavit prior to the time the skull is marked that attests the place and date that the person discovered the ram.

(3) Individual horns may be possessed without any identification or documentation.

(4) This subsection does not apply to skulls possessed prior to July 11, 2004.

§65.25. *Wildlife Management Plan (WMP).*

(a) Deer.

(1) An approved WMP, specifying a harvest quota for antlerless deer or both buck and antlerless deer, is required for the issuance of Managed Lands Deer Permits and Antlerless/Spike-Buck Deer Control Permits.

(2) MLD permit issuance shall be determined by the WMP as follows.

(A) Level 1 MLD permits shall be issued to a landowner whose WMP includes current deer population data.

(B) Level 2 MLD permits shall be issued to a landowner whose WMP includes:

(i) deer population data for both the current year and the immediately preceding year;

(ii) deer harvest data from the immediately preceding year; and

(iii) at least two recommended habitat management practices.

(C) Level 3 MLD permits shall be issued to a landowner whose WMP includes:

(i) deer population data for the current year and the immediately preceding two years;

(ii) deer harvest data from the immediately preceding two years; and

(iii) at least four recommended habitat management practices.

(3) A WMP is not valid unless it is:

(A) consistent with Parks and Wildlife Code, §61.053 and §61.056; and

(B) signed by a Wildlife Division biologist or technician. A WMP is valid for one year following the date of such signature.

(b) Lesser Prairie Chicken. No person may hunt a lesser prairie chicken in this state except on a property for which the department has approved a WMP as set forth under this subsection that contains a recommended harvest for lesser prairie chicken.

(1) The WMP required by this subsection shall include:

(A) a lesser prairie chicken population estimate for the current year (April breeding-ground counts);

(B) accurate harvest data from the property for the initial hunting season and each season thereafter that the landowner seeks to hunt lesser prairie chicken on the property;

(C) a biological evaluation of the quality of existing prairie chicken habitat and the potential for enhancing existing habitat or creating additional habitat;

(D) at least three ~~five~~ department-recommended habitat management practices designed to increase, enhance, or connect lesser prairie chicken habitat; and

(E) a recommended harvest quota not to exceed 10 ~~five~~ percent of the estimated lesser prairie chicken population on the property.

(2) The landowner agrees, by signing the WMP, to perform data collection for the purposes of meeting the requirements of paragraph (1) of this subsection.

(3) A WMP under this subsection is not valid unless it has been signed by a department employee authorized to approve management plans. A WMP under this subsection is valid for one year following such signature. The department may refuse to approve a WMP if the landowner has not complied with the provisions of this subsection.

(4) The department may authorize a recommended harvest in the absence of population or harvest data only for the year 2005; thereafter, a property must meet the requirements of paragraph (1) of this subsection.

(5) The bag and possession limits for the harvest of lesser prairie chicken shall be as provided in §65.56 of this title (relating to Lesser Prairie Chicken: Open Seasons, Bag, and Possession Limits).

(6) No person may possess a harvested lesser prairie chicken anywhere other than the property on which the lesser prairie chicken was harvested unless that person also possesses a completed, department-supplied affidavit signed by the landowner of the property where the person harvested the lesser prairie chicken.

(7) Each lesser prairie chicken harvested on a property for which the department has issued a quota under this subsection shall be recorded in a harvest log. The harvest log shall contain the name of each person who killed a lesser prairie chicken, the date, and the number of lesser prairie chicken the person killed. The harvest log shall be maintained on the property, shall be kept current, and shall be made available for inspection at the request of a department employee acting within the scope of official duties.

(c) Javelina.

(1) An approved WMP, specifying an annual harvest quota for javelina, is required for the issuance of an annual harvest quota for javelina on a property. The WMP shall include:

(A) javelina population data for both the current year and the immediately preceding year;

(B) javelina harvest data from the immediately preceding year; and

(C) at least two recommended habitat management practices. Recommended habitat management practices already being performed under an existing department-approved WMP may be used to satisfy the requirements of this subparagraph on a one-for-one basis.

(2) A WMP is not valid unless it is:

(A) consistent with Parks and Wildlife Code, §61.053; and

(B) signed by a Wildlife Division biologist or technician authorized to approve management plans. A WMP is valid for one year following the date of such signature.

(3) The landowner agrees, by signing the WMP, to perform data collection for the purposes of meeting the requirements of paragraph (1) of this subsection.

(4) The department may refuse to approve a WMP if the landowner has not complied with the provisions of this subsection.

(5) No person may possess a javelina harvested under a quota issued under this section anywhere other than the property on which the javelina was harvested unless that person also possesses a completed, department-supplied affidavit signed by the landowner of the property where the person harvested the javelina.

(6) Each javelina harvested on a property for which the department has issued a quota under this subsection shall be recorded in a harvest log. The harvest log shall contain the name of each person who killed a javelina, the date, and the number of javelina the person killed. The harvest log shall be maintained on the property, shall be kept current, and shall be made available for inspection at the request of a department employee acting within the scope of official duties.

§65.34. Managed Lands Deer Permits (MLDP)--Mule Deer.

(a) MLDPs for mule deer may be issued only to a landowner who has a current wildlife management plan (WMP) in accordance with subsection (b) of this section that specifies a harvest quota for both buck and antlerless mule deer or antlerless mule deer only. A WMP is not valid unless it is:

(1) consistent with Parks and Wildlife Code, §§61.053 and 61.056; and

(2) signed by a Wildlife Division biologist or technician authorized to write wildlife management plans. A WMP is valid for one year following the date of such signature.

(b) MLDP issuance for mule deer shall be determined by the WMP as follows. MLDPs shall be issued to a landowner whose WMP includes:

(1) deer population data for both the current year and the two immediately preceding years;

(2) deer harvest data from the immediately preceding two years; and

(3) at least three recommended habitat improvements.

(c) An MLDP issued under this section permits the take of antlerless and/or buck mule deer, as specified on the permit. An MLDP issued under this paragraph is valid:

(1) only on the property for which it is issued (as described in the WMP); and

(2) from the first Saturday in November through the first Sunday in January.

(d) There is no bag limit for antlerless deer on properties for which antlerless permits have been issued.

(e) There is no bag limit for buck deer on properties for which buck permits have been issued.

~~[(f) The provisions of §65.42(e)(5) of this title (relating to Archery-Only Open Season) and the stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I, do not apply on properties for which both buck and antlerless permits have been issued.]~~

~~[(f) [(g)]~~ If MLDP antlerless permits have been issued for a property, each antlerless deer harvested on the property must be immediately tagged with a valid MLDP antlerless permit. If MLDP buck permits have been issued for a property, each buck deer harvested on the property must be immediately tagged with a valid MLDP buck permit. If an appropriate MLDP is not attached immediately at the time of kill, the person who killed the deer shall immediately take the carcass to a location on the property where an appropriate MLDP shall be attached.

~~[(g) [(h)]~~ If a landowner in possession of MLDPs does not wish to abide by the harvest quota or habitat management practices specified by the WMP, the landowner must return all MLDPs to the department no later than one day prior to the date that the permits are valid under subsection (c) of this section.

~~[(h) [(i)]~~ In the event that unforeseeable developments such as floods, droughts, or other natural disasters make the attainment of recommended habitat management practices or harvest goals impractical or impossible, the department may, on a case-by-case basis, waive the requirements of this section.

~~[(i) [(j)]~~ The department reserves the right to deny further issuance of MLDPs to a landowner who exceeds the harvest quota specified by the WMP or who does not otherwise abide by the WMP. A property for which the department denies further permit issuance under this subsection is ineligible to receive MLDPs for a period of three years from the date of denial.

~~[(j) [(k)]~~ MLDP requests received by the department before August 15 of each year shall be approved or denied by November 1 of the same year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2007.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §§65.42, 65.44, 65.64

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; §42.017, which authorizes the commission to modify or eliminate the tagging requirements of §§42.018, 42.0185, or 42.020, or other similar tagging requirements in Chapter 42; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendments affect Parks and Wildlife Code, Chapters 42, 61, and 67.

§65.42. Deer.

(a) No person may exceed the applicable county bag limit or the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck), except as provided by:

(1) §65.26 of this title (relating to Managed Lands Deer Permits (MLDP)--White-tailed Deer);

(2) §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)--Mule Deer);

(3) §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits);

(4) §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(5) an antlerless mule deer permit issued under §65.32 of this title (relating to Antlerless Mule Deer Permits);

(6) ~~[(5)]~~ special permits under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation); or

(7) ~~[(6)]~~ special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(b) White-tailed deer. The open seasons and annual bag limits for white-tailed deer shall be as follows.

(1) In Aransas, Atascosa, Bee, Brooks, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Willacy, Zapata, and Zavala counties, there is a general open season.

(A) Open season: the first Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than three bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than three of which may be spike bucks.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(2) In Bandera, Bexar, Blanco, Brown, Burnet, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Edwards, Gillespie, Glasscock, Hays (west of Interstate 35), Howard, Irion, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mills, Mitchell, Nolan, Real, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton, Tom Green, Travis (west of Interstate 35), Uvalde (north of U.S. Highway 90) and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than two of which may be spike bucks.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(3) In Brewster, Culberson, Jeff Davis, Pecos, Presidio, Reeves, Terrell, and Upton counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(4) In Angelina, Chambers, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more than two antlerless.

(C) From opening day through the Sunday immediately following Thanksgiving, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless, LAMPS, or USFS antlerless permits have been issued for the tract of land. On USFS, Corps of Engineers, Sabine River Authority, and Trinity River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits. On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(5) In Bell (west of IH 35), Bosque, Comanche, Coryell, Eastland, Erath, Hamilton, Lampasas, Somervell, and Williamson (west of IH 35) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two.

(E) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(6) In Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Jackson (south of U.S. Highway 59), Matagorda, Victoria (south of U.S. Highway 59), and Wharton (south of U.S. Highway 59) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two.

(E) From opening day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless permits have been issued for the tract of land. If MLDP antlerless permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by MLDP antlerless permit.

(7) In Cass, Harrison, Marion, Nacogdoches, Panola, Sabine, San Augustine, and Shelby, counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two.

(E) During the first 16 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLDP, LAMPS, or USFS antlerless permits have been issued for the tract of land. On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 16 days of the general season, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits.

(8) In Bowie, Camp, Cherokee, Delta, Fannin, Franklin, Gregg, Hopkins, Houston, Lamar, Morris, Red River, Rusk, Titus, Upshur, and Wood counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two.

(E) From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless or LAMPS permits have been issued for the tract of land. On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through the day before Thanksgiving Day, and from the Monday immediately following Thanksgiving Day through the first Sunday in January, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits.

(9) In Austin, Bastrop, Bell (east of IH 35), Burleson, Caldwell, Colorado, Comal (east of IH 35), De Witt, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of IH 35), Jackson (north of U.S. Highway 59), Karnes, Lavaca, Lee, Leon, Rains, Travis (east of IH 35), Victoria (north of U.S. Highway 59), Waller, Washington, Wharton (north of U.S. Highway 59), Williamson (east of IH 35), and Wilson counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two, by MLDP antlerless or LAMPS permit only.

(10) In Archer, Armstrong, Baylor, Borden, Briscoe, Callahan, Carson, Childress, Clay, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Haskell, Hemphill, Hood, Hutchinson, Jack, Jones, Kent, King, Knox, Lipscomb, McLennan, Montague, Motley, Ochiltree, Palo Pinto, Parker, Randall, Roberts, Scurry, Shackelford, Stephens, Stonewall, Swisher, Taylor, Throckmorton, Wheeler, Wise, and Young counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(11) In Cooke, Hardeman, Hill, Johnson, Wichita, and Wilbarger counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) From opening day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless permits have been issued for the tract of land. If MLDP antlerless permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by MLDP antlerless permit.

(12) In Denton and Tarrant counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) During the first 16 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLDP, LAMPS, or USFS antlerless permits have been issued for the tract of land. On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 16 days of the general season, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits.

(13) In Brazos, Grayson, Grimes, Madison, and Robertson counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless or LAMPS permits have been issued for the tract of land. On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by

permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through the day before Thanksgiving Day, and from the Monday immediately following Thanksgiving Day through the first Sunday in January, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits, except on the Hagerman National Wildlife Refuge.

(D) Special regulation. In Grayson County, [:]

[(+)] lawful means are restricted to lawful archery equipment and crossbows only, including MLDP properties[; and]

[(+)] antlerless deer shall be taken by MLDP only, except on the Hagerman National Wildlife Refuge].

(14) In Anderson, Crane, Ector, Ellis, Falls, Freestone, Henderson, Hunt, Kaufman, Limestone, Loving, Midland, Milam, Navarro, Smith, Van Zandt, and Ward counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: one buck, no more than two antlerless. Antlerless deer may be taken only by MLDP antlerless or LAMPS permits.

(15) In Dallam, Hartley, Moore, Oldham, Potter, and Sherman counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: one buck, no more than two antlerless. Antlerless deer may be taken only by MLDP antlerless permit.

(16) In Andrews, Bailey, Castro, Cochran, Collin, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Terry, Winkler, and Yoakum counties, there is no general open season.

(17) Archery-only open seasons. In all counties where there is a general open season for white-tailed deer, there is an archery-only open season during which either sex of white-tailed deer may be taken as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: the Saturday closest to September 30 for 35 [30] consecutive days.

(B) Bag limit: the bag limit in any given county is as provided for that county during the general open season.

(C) No permit is required to hunt antlerless deer unless MLDP permits have been issued for the property.

(18) Muzzleloader-only open seasons, and bag and possession limits shall be as follows.

(A) In Brewster, Culberson, Jeff Davis, Pecos, Presidio, Reeves, Terrell, and Upton counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks.

(B) In Angelina, Chambers, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker counties, there is an open season during

which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks and no more than two antlerless.

(C) No permit is required to hunt antlerless deer unless MLDP permits have been issued for the property.

(19) Special Youth-Only Seasons. There shall be special youth-only general hunting seasons in all counties where there is a general open season for white-tailed deer.

(A) early open season: the Saturday and Sunday immediately before the first Saturday in November.

(B) late open season: the third weekend (Saturday and Sunday) in January.

(C) Bag limits, provisions for the take of antlerless deer, and special requirements in the individual counties listed in paragraphs (1) - (14) of this subsection shall be as specified for the first two days of the general open season in those counties, except as provided in subparagraph (D) of this paragraph.

(D) Provisions for the take of antlerless deer in the individual counties listed in paragraph (10) of this subsection shall be as specified in those counties for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(E) Licensed hunters 16 years of age or younger may hunt deer by any lawful means during the seasons established by subparagraphs (A) and (B) of this paragraph, except in Grayson County, where legal means are restricted to crossbow and lawful archery equipment.

(F) A licensed hunter 16 years of age or younger may hunt any deer on any property (including MLDP properties) during the seasons established by subparagraphs (A) and (B) of this paragraph.

(G) The stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I, does not apply during the seasons established by this paragraph.

(c) Mule deer. The open seasons and annual bag limits for mule deer shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Stonewall, and Swisher counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(2) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, there is a general open season.

(A) Open season: last Saturday in November for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(3) In Andrews (west of U.S. Highway 385), Bailey, Cochran, Hockley, Lamb, Terry, and Yoakum counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for nine consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken by permit only.

(4) In all other counties, there is no general open season for mule deer.

(5) Archery-only open seasons and bag and possession limits shall be as follows. During an archery-only open season, deer may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods). No antlerless permit is required unless MLD antlerless permits have been issued for the property.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 35 [39] consecutive days.

(ii) Bag limit: one buck deer.

(B) In Brewster, Pecos, and Terrell counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 35 [39] consecutive days.

(ii) Bag limit: two deer, no more than one buck.

(C) In all other counties, there is no archery-only open season for mule deer.

§65.44. Javelina: Open Seasons and Annual Bag Limits.

(a) In Andrews, Archer, Baylor, Blanco, Caldwell, Calhoun, Coke, Comal, Concho, Crane, DeWitt, Ector, Foard, Gillespie, Glasscock, Goliad, Gonzales, Guadalupe, Hays, Howard, Irion, Knox, Llano, Loving, McCulloch, Martin, Mason, Midland, Mitchell, Nolan, Reagan, Refugio, Runnels, San Saba, Sterling, Taylor, Tom Green, Upton, Victoria, Ward, Wichita, Wilbarger, and Winkler counties, there is a general open season.

(1) Open season: October 1 through the last Sunday in February.

(2) Bag limit: Two javelina.

(3) Possession limit: two javelina.

(b) In Aransas, Atascosa, Bandera, Bee, Bexar, Brewster, Brooks, Cameron, Crockett, Culberson, Dimmit, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Menard, Nueces, Pecos, Presidio, Real, Reeves, San Patricio, Schleicher, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Wilson, Zapata, and Zavala counties, there is an open season from September 1 through August 31.

(1) Bag limit: two javelina.

(2) Possession limit: two javelina.

(c) In all other counties, there is no open season for javelina.

(d) The bag limits established in this section do not apply on properties for which the department has established an annual harvest quota under §65.25(c) of this title (relating to Wildlife Management Plan (WMP)).

§65.64. Turkey.

(a) The annual bag limit for Rio Grande and Eastern turkey, in the aggregate, is four, no more than one of which may be an Eastern turkey.

(b) Rio Grande Turkey. The open seasons and bag limits for Rio Grande turkey shall be as follows.

(1) Fall seasons and bag limits:

(A) In Aransas, Atascosa, Bee, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kinney (south of U.S. Highway 90), LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (in that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Zapata, and Zavala counties, there is a fall general open season.

(i) Open season: first Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(B) In Brooks, Kenedy, Kleberg, and Willacy counties, there is a fall general open season.

(i) Open season: first Saturday in November through the last Sunday in February.

(ii) Bag limit: four turkeys, either sex.

(C) In Archer, Armstrong, Bandera, Baylor, Bell, Bexar, Blanco, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Karnes, Kendall, Kent, Kerr, Kimble, King, Kinney (north of U.S. Highway 90), Knox, Lipscomb, Lampasas, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Medina (north of U.S. Highway 90), Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, Sutton, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Uvalde (north of U.S. Highway 90), Ward, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Wise, Val Verde (that portion located north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239), and Young counties, there is a fall general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(2) Archery-only season and bag limits. In all counties where there is a general fall season for turkey there is an open season

during which turkey may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: from the Saturday closest to September 30 for 35 [30] consecutive days.

(B) Bag limit: in any given county, the annual bag limit is as provided by this section for the fall general season in that county.

(3) Spring season and bag limits.

(A) In Archer, Armstrong, [~~Aransas, Atascosa, Bander-~~], Baylor, Bell, [~~Bee, Bexar, Blanco,~~] Borden, Bosque, [~~Brooks, Brewster,~~] Briscoe, Brown, Burnet, Callahan, [~~Calhoun, Cameron,~~] Carson, Childress, Clay, Coke, Coleman, Collingsworth, [~~Comal,~~] Comanche, Concho, Cooke, Coryell, Cottle, Crane, [~~Crockett,~~] Crosby, Dawson, Denton, Dickens, [~~Dimmit,~~] Donley, [~~Duval,~~] Eastland, Ector, [~~Edwards,~~] Ellis, Erath, Fisher, Floyd, Foard, [~~Frio,~~] Garza, [~~Gillespie,~~] Glasscock, [~~Goliad, Gonzales,~~] Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, [~~Hays,~~] Hemphill, [~~Hidalgo,~~] Hill, Hood, Howard, Hutchinson, Irion, Jack, [~~Jeff Davis, Jim Hogg, Jim Wells,~~] Johnson, Jones, [~~Karnes, Kendall, Kenedy,~~] Kent, [~~Kerr, Kimble,~~] King, [~~Kinney, Kleberg,~~] Knox, Lampasas, [~~LaSalle,~~] Lipscomb, [~~Live Oak,~~] Llano, Lynn, Martin, Mason, [~~Maverick,~~] McCulloch, McLennan, [~~McMullen, Medina,~~] Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, [~~Nueces,~~] Ochiltree, Oldham, Palo Pinto, Parker, [~~Pecos,~~] Potter, Randall, Reagan, [~~Real, Refugio,~~] Roberts, Runnels, San Saba, [~~San Patricio,~~] Schleicher, Scurry, Shackelford, Somervell, [~~Starr,~~] Stephens, Sterling, Stonewall, [~~Sutton,~~] Swisher, Tarrant, Taylor, [~~Terrell,~~] Throckmorton, Tom Green, Travis, Upton, [~~Uvalde, Val Verde,~~] Ward, [~~Webb,~~] Wheeler, Wichita, Wilbarger, [~~Willacy,~~] Williamson, [~~Wilson,~~] Wise, and Young[, ~~Zapata, and Zavala~~] counties, there is a spring general open season.

(i) Open season: Saturday closest to April 7 [~~April 4~~] for 44 consecutive days.

(ii) Bag limit: four turkeys, gobblers only.

(B) In Aransas, Atascosa, Bandera, Bee, Bexar, Blanco, Brewster, Brooks, Calhoun, Cameron, Comal, Crockett, DeWitt, Dimmit, Duval, Edwards, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Hidalgo, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Pecos, Real, Refugio, San Patricio, Starr, Sutton, Terrell, Uvalde, Val Verde, Victoria, Webb, Willacy, Wilson, Zapata, and Zavala counties, there is a spring general open season.

(i) Open season: Saturday closest to March 18 for 44 consecutive days.

(ii) Bag limit: four turkeys, gobblers only.

(C) [~~(B)~~] In Bastrop, Caldwell, Colorado, [~~De Witt,~~] Fayette, [~~Guadalupe,~~] Jackson, Lavaca, Lee, and Milam[, and Victoria] counties, there is a spring general open season.

(i) Open season: from April 1 through April 30.

(ii) Bag limit: one turkey, gobblers only.

(4) Special Youth-Only Seasons. Only licensed hunters 16 years of age or younger may hunt during the seasons established by this subsection.

(A) There shall be a special youth-only fall general hunting season in all counties where there is a fall general open season.

(i) open season : the weekend (Saturday and Sunday) immediately preceding the first Saturday in November, and the third weekend (Saturday and Sunday) in January.

(ii) bag limit: as specified for individual counties in paragraph (1) of this subsection.

(B) There shall be special youth-only spring general open hunting seasons for Rio Grande turkey in the counties listed in paragraph (3)(A) of this section.

(i) open seasons: the weekend (Saturday and Sunday) immediately preceding the first day of the general open spring season and the weekend (Saturday and Sunday) immediately following the close of the general open spring season.

(ii) bag limit: as specified for individual counties in paragraph (3)(A)(ii) of this subsection.

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Angelina, Bowie, Brazoria, Camp, Cass, Cherokee, Delta, Fannin, Fort Bend, Franklin, Grayson, Gregg, Hardin, Harrison, Hopkins, Houston, Hunt, Jasper, Lamar, Liberty, Marion, Matagorda, Montgomery, Morris, Nacogdoches, Newton, Panola, Polk, Rains, Red River, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Walker, Wharton, and Wood counties, there is a spring season during which both Rio Grande and Eastern turkey may be lawfully hunted.

(1) Open season: from April 1 for 30 consecutive days.

(2) Bag limit (both species combined): one turkey, gobbler only.

(3) In the counties listed in this subsection:

(A) it is unlawful to hunt turkey by any means other than a shotgun, lawful archery equipment, or crossbows;

(B) it is unlawful for any person to take or attempt to take turkeys by the aid of baiting, or on or over a baited area; and

(C) all turkeys harvested during the open season must be registered at designated check stations within 24 hours of the time of kill. Harvested turkeys may be field dressed but must otherwise remain intact.

(d) In all counties not listed in subsection (b) or (c) of this section, the season is closed for hunting turkey.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700519

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 389-4775



DIVISION 3. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §65.72, §65.82

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the

means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; §42.017, which authorizes the commission to modify or eliminate the tagging requirements of §§42.018, 42.0185, or 42.020, or other similar tagging requirements in Chapter 42; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendments affect Parks and Wildlife Code, Chapters 42, 61, and 67.

§65.72. *Fish.*

(a) General rules.

(1) There are no public waters closed to the taking and retaining of fish, except as provided in this subchapter.

(2) Game fish may be taken only by pole and line, except as provided in this subchapter.

(3) The bag and possession limits of this subchapter do not apply to the possession or landing of fish lawfully raised under an offshore aquaculture permit issued under Chapter 57, Subchapter C of this title (relating to Introduction of Fish, Shellfish, and Aquatic Plants).

(4) ~~[(3)]~~ It is unlawful:

(A) to take or attempt to take, or possess fish within a protected length limit, in greater numbers, by other means, or at any time or place, other than as permitted under this subchapter;

(B) while fishing on or in public waters to have in possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters;

(C) to land by boat or person any fish within a protected length limit, or in excess of the daily bag limit or possession limit established for those fish;

(D) to use game fish or any part thereof as bait, except for processed catfish heads used as crab-trap bait by a licensed crab fisherman, provided the catfish is obtained from an aquaculture facility permitted to operate in the United States. A person who uses catfish as bait under this subparagraph shall, upon the request of a department employee acting within the scope of official duties, furnish appropriate authenticating documentation, such as a bill of sale or receipt, to prove that the catfish was obtained from a legal source;

(E) to possess a finfish of any species, except broadbill swordfish, shark or king mackerel, taken from public water that has the head or tail removed until such person finally lands the catch on the mainland, a peninsula, or barrier island not including jetties or piers and does not transport the catch by boat;

(F) to use any vessel ~~[airboats or jet-driven devices]~~ to pursue, ~~[and]~~ harass, or harry fish; or

(G) to release into the public waters of this state a fish with a device or substance implanted or attached that is designed, constructed or adapted to produce an audible, visual, or electronic signal used to monitor, track, follow, or in any manner aid in the location of the released fish.

(5) ~~[(4)]~~ Finfish tags: Prohibited Acts.

(A) No person may purchase or use more finfish (red drum) tags during a license year than the number and type authorized by the commission, excluding duplicate tags issued under Parks and Wildlife Code, §46.006.

(B) It is unlawful to:

(i) use the same finfish tag for the purpose of tagging more than one finfish;

(ii) use a finfish tag in the name of another person;

(iii) use a tag on a finfish for which another tag is specifically required;

(iv) catch and retain a finfish required to be tagged and fail to immediately attach and secure a tag, with the day and month of catch cut out, to the finfish at the narrowest part of the finfish tail, just ahead of the tail fin;

(v) have in possession both a Red Drum Tag and a Duplicate Red Drum Tag issued to the same license or salt water stamp holder;

(vi) have in possession both a Red Drum Tag or a Duplicate Red Drum Tag and a Bonus Red Drum Tag issued to the same license or salt water stamp holder;

(vii) have in possession both an Exempt Red Drum Tag and a Duplicate Exempt Red Drum Tag issued to the same license holder; or

(viii) have in possession both an Exempt Red Drum Tag or a Duplicate Exempt Red Drum Tag and a Bonus Red Drum Tag issued to the same holder.

(6) ~~[(5)]~~ Commercial fishing seasons.

(A) The commercial seasons for finfish species listed in this paragraph and caught in Texas waters shall run concurrently with commercial seasons established for the same species caught in federal waters of the Exclusive Economic Zone (EEZ).

(B) The commercial fishing season in the EEZ will be set by the National Marine Fisheries Service for:

(i) red snapper under guidelines established by the Fishery Management Plan for Reef Fish Resources for the Gulf of Mexico.~~;~~ No person may land red snapper in Texas for commercial purposes unless that person is in compliance with the provisions of this clause.

(I) Requirement for Individual Fishing Quota (IFQ) vessel endorsement and allocation. No person aboard any vessel shall sell, barter, trade, or exchange red snapper; land or attempt to land red snapper for the purpose of sale, barter, trade, or exchange; or possess red snapper for the purpose of sale, barter, trade, or exchange unless the person possesses a valid federal permit for the harvest of Gulf of Mexico Reef Fish and a valid federal red snapper Individual Fishing Quota (IFQ) vessel endorsement.

(-a-) No person shall harvest or land red snapper for the purpose of sale, barter, trade, or exchange, without holding or being assigned federal IFQ allocation at least equal to the pounds of red snapper landed /docked at a shore side location.

(-b-) At-sea or dockside transfer of red snapper from one vessel to another vessel for the purpose of sale, barter, trade, or exchange, is prohibited.

(-c-) Except as provided in this subparagraph, no person shall purchase, sell, exchange, barter, or attempt to purchase, sell, exchange, or barter any red snapper in excess of any possession

limit for which federal commercial license, permit, and appropriate allocation were issued.

(-d-) On the last fishing trip of the year, a vessel may exceed by 10 % the remaining IFQ allocation.

(II) Offloading and transfer. During the hours from 6:00 p.m. until 6:00 a.m. (local time), no person shall offload from a vessel or receive from a vessel red snapper harvested for the purpose of sale, barter, trade, or exchange. No person who is in charge of a commercial red snapper fishing vessel shall offload red snapper from the vessel prior to three hours after proper notification is made to National Oceanographic and Atmospheric Administration (NOAA) Fisheries.

(III) Recreational limits. Persons aboard a vessel for which permits indicate both charter vessel/headboat for Gulf reef fish and commercial Gulf reef fish may retain reef fish under the recreational take and possession limits specified in subsection (b) of this section, provided the vessel is operating as a validly licensed charter vessel or headboat with prepaid recreational charter fishermen aboard the vessel.

(IV) VMS requirement. No person shall harvest red snapper for the purpose of sale, barter, trade or exchange, from a vessel unless that vessel is equipped with a fully operational and federally approved Vessel Monitoring System (VMS) device. Approved devices are those devices approved by NOAA Fisheries and operating under the requirements mandated by NOAA Fisheries.

(V) Requirement for IFQ dealer endorsement. In addition to the requirement for a federal dealer permit for Gulf reef fish, a dealer must have a federal Gulf red snapper IFQ dealer endorsement in order to receive Gulf red snapper from a commercial fishing vessel. A person aboard a vessel with a federal Gulf red snapper IFQ vessel endorsement must also have a federal Gulf red snapper IFQ dealer endorsement to sell to anyone other than a permitted dealer.

(VI) Requirement for transaction approval code. The owner or operator of a vessel landing red snapper for the purpose of sale, barter, trade, or exchange is responsible for calling National Marine Fisheries Service (NMFS) Office of Law Enforcement at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. Failure to comply with this advance notice of landing requirement will preclude authorization to complete the required NMFS landing transaction report and, thus, will preclude issuance of the required NMFS-issued transaction approval code. Possession of red snapper for the purpose of sale, barter, trade, or exchange, from the time of transfer from a vessel through possession by a dealer is prohibited unless the red snapper are accompanied by a transaction approval code verifying a legal transaction of the amount of red snapper in possession.

(VII) Wholesale dealers. Wholesale dealers are required to comply with the provisions of Parks and Wildlife Code, §66.019, when acquiring, purchasing, possessing, and selling red snapper. Wholesale dealers shall maintain approval codes issued by NOAA Fisheries associated with all transactions of red snapper on purchases and sales on records.

(VIII) Recreational limit. All persons aboard a vessel for which no commercial vessel permit for Gulf reef fish has been issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to the recreational bag limit specified in subsection (b) of this section for red snapper, and such fish may not be bartered or sold.

(ii) king mackerel under guidelines established by the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; and

(iii) sharks (all species, their hybrids and subspecies) under guidelines established by the Fishery Management Plan for Highly Migratory Species[]].

(C) When federal and/or state waters are closed, it will be unlawful to:

(i) purchase, barter, trade or sell finfish species listed in this paragraph landed in this state;

(ii) transfer at sea finfish species listed in this paragraph caught or possessed in the waters of this state; and

(iii) possess finfish species listed in this paragraph in excess of the current recreational bag or possession limit in or on the waters of this state.

(7) [(6)] In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Jeff Davis, Hudspeth, Kinney, Loving, Pecos, Presidio, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, the only fishes that may be used or possessed for bait while fishing are common carp, fathead minnows, gizzard and threadfin shad, sunfish (*Lepomis*), goldfish, golden shiners, Mexican tetra, Rio Grande cichlid, and silversides (*Atherinidae* family).

(b) Bag, possession, and length limits.

(1) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(2) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) Possession limits are twice the daily bag limit on game and non-game fish except as provided in these rules.

(B) For flounder, the possession limit is the daily bag limit.

(C) Except as provided in subparagraph (D) of this paragraph, the statewide [Statewide] daily bag and length limits shall be as follows.

Figure: 31 TAC §65.72(b)(2)(C)

(D) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(i) Freshwater species. [The following is a figure:]

Figure: 31 TAC §65.72(b)(2)(D)(i)

(ii) Saltwater species.

Figure: 31 TAC §65.72(b)(2)(D)(ii)

(iii) [(ii)] Bag and possession limits for black drum and sheepshead do not apply to the holder of a valid Commercial Finfish Fisherman's License.

(iv) [(iii)] Fish caught in federal waters in compliance with a federal fishery management plan may be landed in Texas.

(v) [(iv)] The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested.

(c) Devices, means and methods.

(1) In fresh water only, it is unlawful to fish with more than 100 hooks on all devices combined.

(2) Game and non-game fish may be taken by pole and line only in:

(A) community fishing lakes;

(B) sections of rivers lying totally within the boundaries of state parks;

(C) Lake Pflugerville (Travis County);

(D) the North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam; and

(E) the South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(3) It is unlawful to take, attempt to take, or possess fish caught in public waters of this state by any device, means, or method other than as authorized in this subsection.

(4) In salt water only, it is unlawful to fish with any device that is marked with a buoy made of a plastic bottle(s) of any color or size.

(5) Device restrictions.

(A) Cast net. It is unlawful to use a cast net exceeding 14 feet in diameter.

(i) Only non-game fish may be taken with a cast net.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(B) Dip net.

(i) It is unlawful to use a dip net except:

(I) to aid in the landing of fish caught on other legal devices; and

(II) to take non-game fish.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(C) Gaff.

(i) It is unlawful to use a gaff except to aid in landing fish caught by other legal devices, means or methods.

(ii) Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(D) Gig. Only non-game fish may be taken with a gig.

(E) Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(i) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 30 days after the date set out, and must include the number of the permit to sell non-game fish taken from freshwater, if applicable;

(ii) for commercial purposes that is not marked with an orange free-floating device;

(iii) for non-commercial purposes that is not marked with a white free-floating device;

(iv) in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fan-

nin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(F) Lawful archery equipment. Only non-game fish, channel catfish, blue catfish, and flathead catfish may be taken with lawful archery equipment or crossbow. After August 31, 2008 [2007], only nongame fish may be taken by means of lawful archery or cross-bow.

(G) Minnow trap (fresh water and salt water).

(i) Only non-game fish may be taken with a minnow trap.

(ii) It is unlawful to use a minnow trap that exceeds 24 inches in length or with a throat larger than one by three inches.

(H) Perch traps. For use in salt water only.

(i) Perch traps may be used only for taking non-game fish.

(ii) It is unlawful to fish a perch trap that:

(I) exceeds 18 cubic feet in volume;

(II) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(-a-) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(-b-) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(-c-) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than 3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except:

(-1-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-2-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-3-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand #530), sisal twine (comparable to Lehigh brand #390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed.

(III) that is not marked with a floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached. Gear tags are valid for 30 days after date set out.

(I) Pole and line.

(i) Game and non-game fish may be taken by pole and line. It is unlawful to take or attempt to take fish with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish (snagging or jerking). A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(ii) Game and nongame fish may be taken by pole and line. It is unlawful to take fish with a hand-operated device held underwater except that a spear gun and spear may be used to take nongame fish.

(iii) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to the easternmost bridge crossing on F.M. Road 306, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. This does not prohibit the use of artificial lures that contain components of hair or feathers. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(J) Purse seine (net).

(i) Purse seines may be used only for taking menhaden, only from that portion of the Gulf of Mexico within the jurisdiction of this state extending from one-half mile offshore to nine nautical miles offshore, and only during the period of time beginning the third Monday in April through the first day in November each year.

(ii) Purse seines used for taking menhaden may not be used within one mile of any jetty or pass.

(iii) The purse seine, not including the bag, shall not be less than three-fourths inch square mesh.

(K) Sail line. For use in salt water only.

(i) Non-game fish, red drum, spotted seatrout, and sharks may be taken with a sail line.

(ii) Line length shall not exceed 1,800 feet from the reel to the sail.

(iii) The sail and most shoreward float must be a highly visible orange or red color. All other floats must be yellow.

(iv) No float on the line may be more than 200 feet from the sail.

(v) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(vi) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(vii) There is no hook spacing requirement for sail lines.

(viii) No more than one sail line may be used per fisherman.

(ix) Sail lines may not be used by the holder of a commercial fishing license.

(x) Sail lines must be attended at all times the line is fishing.

(xi) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(L) Seine.

(i) Only non-game fish may be taken with a seine.

(ii) It is unlawful to use a seine:

(I) which is not manually operated.

(II) with mesh exceeding 1/2-inch square.

(III) that exceeds 20 feet in length.

(iii) In salt water, non-game fish may be taken by seine for bait purposes only.

(M) Shad trawl. For use in fresh water only.

(i) Only non-game fish may be taken with a shad trawl.

(ii) It is unlawful to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter.

(iii) A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(N) Spear. Only non-game fish may be taken with a spear.

(O) Spear gun. Only non-game fish may be taken with spear gun.

(P) Throwline. For use in fresh water only.

(i) Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.

(ii) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(Q) Trotline.

(i) Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline.

(ii) It is unlawful to use a trotline:

(I) with a mainline length exceeding 600 feet;

(II) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 30 days after date set out, except on saltwater trotlines, a gear tag is not required to be dated;

(III) with hook interval less than three horizontal feet;

(IV) with metallic stakes; or

(V) with the main fishing line and attached hooks and stagings above the water's surface.

(iii) In fresh water, it is unlawful to use a trotline:

(I) with more than 50 hooks;

(II) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Lakes Coffee Mill and Davy Crockett in Fannin County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in

Cameron County, Boerne City Park Lake in Kendall County, and Tankersley Reservoir in Titus County.

(iv) In salt water:

(I) it is unlawful to use a trotline:

(-a-) in or on the waters of the Gulf of Mexico within the jurisdiction of this state;

(-b-) from which red drum, sharks or spotted seatrout caught on the trotline are retained or possessed;

(-c-) placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface;

(-d-) baited with other than natural bait, except sail lines;

(-e-) with hooks other than circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause; or

(-f-) in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island, including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(II) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1 p.m. on Friday through 1:00 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft advisories or higher marine weather advisories issued by the National Weather Service are in place at 8:00 a.m. on Friday, trotlines may remain in the water until 6:00 p.m. on Friday. If small craft advisories are in place at 1:00 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft advisories are lifted by 8:00 a.m. on Saturday, trotlines must be removed by 1:00 p.m. on Saturday. When small craft advisories are lifted by 1:00 p.m. on Saturday, trotlines must be removed by 6:00 p.m. on Saturday. When small craft advisories or higher marine weather advisories are still in place at 1:00 p.m. on Saturday, trotlines may remain in the water through 1:00 p.m. on Sunday. It is a violation to tend, bait, or harvest fish or any other aquatic life from trotlines during the period that trotline removal requirements are suspended under this provision for adverse weather conditions. For purposes of enforcement, the geographic area customarily covered by marine weather advisories will be delineated by department policy.

(III) It is unlawful to fish for commercial purposes with:

(-a-) more than 20 trotlines at one time;

(-b-) any trotline that is not marked with yellow flagging attached to stakes or with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width attached to end fixtures;

(-c-) any trotline that is not marked with yellow flagging attached to stakes or with a yellow buoy bearing the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to end fixtures;

(-d-) any trotline that is marked with yellow flagging or with a buoy bearing a commercial finfish fisherman's li-

cense plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;

(IV) It is unlawful to fish for non-commercial purposes with:

(-a-) more than 1 trotline at any time; or

(-b-) any trotline that is not marked with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide stripe of contrasting color, attached to end fixtures.

(R) Umbrella net.

(i) Only non-game fish may be taken with an umbrella net.

(ii) It is unlawful to use an umbrella net with the area within the frame exceeding 16 square feet.

§65.82. *Other Aquatic Life.*

(a) It is unlawful for a person to knowingly take, kill, or disturb sea turtles or sea turtle eggs in or from the waters of the State of Texas.

(b) It is unlawful for a person to knowingly take or possess a diamondback terrapin (*Malaclemys terrapin*) or their eggs unless the person is authorized to do so under a permit issued under Subchapter O of this chapter (relating to Commercial Nongame Permit) or Chapter 69, Subchapter J of this title (relating to Scientific, Educational, and Zoological Permits).

(c) [(b)] There is no open season on porpoises, dolphins (mammals), whales, or sawfishes (*Pristis perotteti*).

(d) [(e)] It is unlawful for any person to take or kill shell-bearing mollusks, hermit crabs, starfish, or sea urchins from November 1 through April 30 within the following boundary: the bay and pass sides of South Padre Island from the East end of the north jetty at Brazos Santiago Pass to the West end of West Marisol drive in the town of South Padre Island, out 1,000 yards from the mean high-tide line, and bounded to the south by the centerline of the Brazos Santiago Pass.

(e) [(d)] It is unlawful for any person to take, kill, or possess more than 15 univalve snails (all species), to include no more than two of each of the following species: lightening whelk, horse conch, Florida fighting conch, pear whelk, banded tulip, and Florida rocksnail.

(f) [(e)] Any other aquatic life (except threatened and endangered species) not addressed in this subchapter may be taken only by hand or with the devices defined as lawful for taking fish, crabs, oysters, or shrimp in places and at times as provided by proclamations of the Parks and Wildlife Commission and the Parks and Wildlife Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700520

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 389-4775

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter A, §4.1, concerning Regulations Governing Hazardous Materials.

An amendment to §4.1 is necessary to ensure that the Federal Hazardous Material Regulations, incorporated by reference in the section, reflect all amendments and interpretations issued through March 1, 2007. An additional amendment to §4.1 is necessary to remove and update an outdated reference to the term "regional highway administrator".

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The Texas Department of Public Safety, in accordance with the Administrative Procedures and Texas Register Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on March 14, 2007, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.1 regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Government Code, §411.018, and Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Rogers at (512) 424-2116 at least

three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The amendments are proposed pursuant to Texas Government Code, §411.018, which authorizes the director to adopt all or part of the federal hazardous materials rules by reference; and Texas Transportation Code, §644.051, which authorizes the director to adopt all or part of the federal safety regulations by reference.

Texas Government Code, §411.018 and Texas Transportation Code, §644.051 are affected by this proposal.

§4.1. *Transportation of Hazardous Materials.*

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through March [November] 1, 2007 [2006]. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through March [November] 1, 2007 [2006].

(b) Explanations and Exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will be defined as follows:

(A) - (D) (No change.)

(E) FMCSA field administrator, as used in the federal motor carrier safety regulations, [regional highway administrator] means the director of the Texas Department of Public Safety or the designee of the director for vehicles operating in intrastate commerce;

(F) - (G) (No change.)

(2) - (9) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 16, 2007.

TRD-200700550

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 424-2135



SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §§4.11, 4.16, 4.21

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter B, §§4.11, 4.16, and 4.21 concerning Regulations Governing Transportation Safety.

The amendment to §4.11 updates the rule so that it reflects March 1, 2007 in subsection (a). The amendment is necessary

to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in the section, reflect all amendments and interpretations issued through that particular date for the subchapter. Amendment to §4.11(b)(6) is necessary to remove and update an outdated reference to the term "regional highway administrator."

Amendment to §4.16 is necessary to establish a minimum amount of administrative penalty in order to ensure that the penalty imposed has the appropriate effect of deterring future violations.

Amendments to §4.21 are necessary because responsibility for maintaining the Valid Positive Result database, and correspondence relating to the database, has been changed from the Motor Carrier Compliance Audit (MCCA) section to the Motor Carrier Safety (MCS) section. Amending the rule will allow future correspondence to be directed to the correct office.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The Texas Department of Public Safety, in accordance with the Administrative Procedures and Texas Register Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on March 14, 2007, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rules §§4.11, 4.16, and 4.21 regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Mark Rogers, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Rogers at (512) 424-2116 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Depart-

ment of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.11. General Applicability and Definitions.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through March [November] 1, 2007 [2006]. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through March [November] 1, 2007 [2006]. The rules adopted herein are to ensure that:

(1) - (4) (No change.)

(b) Terms. Certain terms, when used in the federal regulations as adopted in subsection (a) of this section, will be defined as follows:

(1) - (5) (No change.)

(6) FMCSA field administrator, as used in the federal motor carrier safety regulations, [regional highway administrator] means the director of the Texas Department of Public Safety for vehicles operating in intrastate commerce;

(7) - (12) (No change.)

(c) (No change.)

§4.16. Administrative Penalties, Payment, Collection, and Settlement of Penalties.

(a) Administrative Penalties.

(1) - (3) (No change.)

(4) In no case will any penalty or group of penalties assessed according to this section be less than a total of \$500.

(5) [(4)] The department will send a Notice of Claim to the person(s), Firm, or business in violation of this subchapter by certified mail, return receipt requested, by personal service, or another manner of delivery that records the receipt of the notice by the person responsible requiring a response within 20 business days. The notice will contain the following language in bold, large face type: "FAILURE TO PAY THIS CLAIM OR RESPOND, AS SPECIFIED IN THE NOTICE OF CLAIM, WITHIN 20 BUSINESS DAYS WILL RESULT IN THIS NOTICE OF CLAIM BEING DEEMED A 'FINAL DEPARTMENT DECISION.' A PERSON WHO IS SUBJECT TO AN ADMINISTRATIVE PENALTY IMPOSED BY THE DEPARTMENT UNDER TEXAS TRANSPORTATION CODE, §644.153 IS REQUIRED TO PAY THE ADMINISTRATIVE PENALTIES OR RESPOND TO THE DEPARTMENT'S NOTICE OF CLAIM. A PERSON WHO FAILS TO PAY, OR BECOMES DELINQUENT IN THE PAYMENT OF THE ADMINISTRATIVE PENALTIES IMPOSED BY THE DEPARTMENT UNDER TEXAS TRANSPORTATION CODE, §644.153 SHALL NOT OPERATE OR DIRECT THE OPERATION OF A COMMERCIAL MOTOR VEHICLE ON THE HIGHWAYS OF THIS STATE UNTIL SUCH TIME AS THE ADMINISTRATIVE PENALTIES HAVE BEEN REMITTED TO THE DEPARTMENT."

(b) (No change.)

§4.21. Reports of Valid Positive Results on Alcohol and Drug Tests.

(a) Reporting Requirement. An employer required under the federal safety regulations to conduct alcohol and controlled substance testing of employees shall report to the department a valid positive result on an alcohol or controlled substance test performed as part of the carrier's alcohol and drug testing program or consortium, as defined by Title 49, Code of Federal Regulations, Part 382, on an employee of the carrier who holds a commercial driver license issued under Texas Transportation Code, Chapter 522.

(1) (No change.)

(2) The report must be submitted on a form prescribed by the department that is available at the following Internet web site address: <http://www.txdps.state.tx.us/forms>. All information requested on the form must be completed. The completed form must be mailed to MCS [MCCA] Section Supervisor, Motor Carrier Bureau, Texas Department of Public Safety, 6200 Guadalupe, MSC#0521 [0522], Austin, Texas 78752-4019, or sent by facsimile to (512) 424-5310. Unless the report is for a refusal to submit a sample, employers must also attach a legible copy of either the Federal Drug Testing, Custody and Control Form (with at least steps one through six completed), the U.S. Department of Transportation (DOT) Alcohol Testing Form (with at least steps one through three completed), or the Medical Review Officer's or Breath Alcohol Technician's report of a positive, diluted, adulterated, or substituted alcohol or drug test.

(3) - (5) (No change.)

(b) Release of Information. Information regarding Reports of Valid Positive Drug or Alcohol Tests is confidential and only subject to release as provided in Texas Transportation Code, 521.053. A request must be submitted on a form prescribed by the department that is available at the following Internet web site address: <http://www.txdps.state.tx.us/forms>. The request form must be mailed to MCS [MCCA] Section Supervisor, Motor Carrier Bureau, Texas Department of Public Safety, 6200 Guadalupe, MSC#0521 [0522], Austin, Texas 78752-4019, or sent by facsimile to (512) 424-5310.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200700551

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER E. RECIPROCITY IN DRIVER
LICENSING

37 TAC §15.92

The Texas Department of Public Safety proposes to amend §15.92, concerning Reciprocity in Driver Licensing. Amendments to the section are necessary in order to update the list

of NATO member countries adhering to the NATO Status of Forces Agreement.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local governments.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the anticipated public benefit resulting from adoption of the section will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposed rule may be submitted to Monica Ogilvie, Staff Attorney, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0300, (512) 424-5230.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.005.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005 are affected by this proposal.

§15.92. Reciprocity in Driver Licensing.

The Department grants like reciprocity for driver licensing to residents of other states.

(1) - (5) (No change.)

(6) The department adheres to the NATO agreement signed in 1951 which provides that the receiving state shall either:

(A) (No change.)

(B) issue its own driving permit or license to any member of a force or civilian component who holds a driving permit or license or military driving permit issued by the sending state or subdivision thereof, provided that no driving test shall be required. The NATO member countries are Belgium, Bulgaria, Canada, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, [West Germany], United Kingdom of Great Britain [and Northern Ireland] and the United States of America; or

(C) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Thomas A. Davis, Jr.

Director

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 407. ADMINISTRATION

37 TAC §§407.1, 407.3, 407.5

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Fire Protection ("TCFP") proposes to repeal Chapter 407, Administration, consisting of the following sections: §407.1 Inscription on Texas Commission on Fire Protection Vehicles, §407.3 Historically Underutilized Businesses, and §407.5 State Vehicle Management. The assessment made by the TCFP for §407.1 and §407.5 is that they have become obsolete due to the fact that the Texas Commission on Fire Protection no longer owns or operates state vehicles.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed repeal is in effect, there will be no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

Comments regarding this proposed repeal may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This proposed repeal is under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to continuing education programs and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel, and to prescribe the means of presenting evidence of fulfillment of those qualifications.

§407.1 Inscription on Texas Commission on Fire Protection Vehicles.

§407.3 Historically Underutilized Businesses.

§407.5 State Vehicle Management.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200700531

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 936-3838

37 TAC §407.1

The Texas Commission on Fire Protection ("TCFP") proposes new §407.1 and simultaneously proposes the repeal of §§407.1, 407.3, and 407.5 which also appear in this issue of the *Texas Register*. TCFP proposes to repeal the current §407.3, Historically Underutilized Businesses and replaces it with a new §407.1, Historically Underutilized Businesses.

The assessment made by the Commission for §407.1, concerning Inscription on Texas Commission on Fire Protection Vehicles and §407.5, concerning State Vehicle Management is that they have become obsolete due to the fact that the Texas Commission on Fire Protection no longer owns or operates state vehicles.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed new section is in effect there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed new section is in effect there will be no public benefit. There will be no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed section.

Comments regarding this proposed new section may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

The new section is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to continuing education programs and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel, and to prescribe the means of presenting evidence of fulfillment of those qualifications.

Cross reference to statute: Texas Government Code, §§419.008, 419.022 and 419.032(b).

§407.1. Historically Underutilized Businesses.

The commission adopts by reference the rules of the Texas Building and Procurement Commission in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter B (relating to Historically Underutilized Business Program). Certification of a business as a historically underutilized business remains the responsibility of the Texas Building and Procurement Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200700532

Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3838

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.3, §421.5

The Texas Commission on Fire Protection ("TCFP") proposes amendments to §421.3 concerning Minimum Standards Set by the Commission and §421.5 concerning Definitions.

The purpose of these proposed amendments is to add position descriptions for Fire Officer I and Fire Officer II, which had not previously existed in §421.3, and in §421.5 to change the word "certification" to "eligibility" for a fire service instructor.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be that certifications will be aligned with a national recognized standard. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

Comments on the proposed amendments may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of the proposed amendments in the *Texas Register*.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to continuing education programs and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel, and to prescribe the means of presenting evidence of fulfillment of those qualifications.

Cross reference to statute: Texas Government Code, §§419.008, 419.022 and 419.032(b).

§421.3. *Minimum Standards Set by the Commission.*

(a) (No change.)

(b) Functional position descriptions.

(1) - (7) (No change.)

(8) Fire Officer I personnel. The following general position description for Fire Officer I personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Officer I operating in the State of Texas. It is

ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection and Fire Instructor I personnel: supervise personnel, assign tasks at emergency operations, direct personnel during training activities, recommend action for member-related problems, coordinate assigned tasks and projects, deal with inquiries and concerns from members of the community, implement policies, perform routine administrative functions, perform preliminary fire investigation, secure an incident scene and preserve evidence, develop pre-incident plans, supervisory emergency operations, develop and implement action plans, deploy assigned resources, ensure a safe work environment for personnel, conduct initial accident investigation, and document an incident.

(B) (No change.)

(9) Fire Officer II personnel. The following general position description for Fire Officer II personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Officer II operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for Fire Officer I [personnel] and Fire Instructor I personnel: motivate members for maximum job performance, evaluate job performance, deliver life safety and fire prevention education programs, prepare budget requests, news releases, and policy changes, conduct pre-incident planning, fire inspections, and fire investigations, supervise multi-unit emergency operations, identify unsafe work environments or behaviors, review injury, accident, and exposure reports.

(B) (No change.)

(10) Fire Service Instructor I personnel. The following general position description for Fire Service Instructor I personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Service Instructor I operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to successfully completing a commission approved course and achieving a passing score on the certification examination [~~the qualifications for basic structural fire protection personnel~~]: deliver instruction effectively from a prepared lesson plan, including use of instructional aids and evaluation instruments; adapt lessons plans to the unique requirements of both students and the authority having jurisdiction; organize the learning environment so that learning is maximized; and meet the record-keeping requirements of the authority having jurisdiction.

(B) (No change.)

(11) Fire Service Instructor II personnel. The following general position description for Fire Service Instructor II personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Service Instructor II operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to successfully completing a commission approved course, achieving a passing score on the certification examination, and meeting the qualifications for [~~the qualifications for basic structural fire protection personnel and~~] Fire Service Instructor I: develop individual lesson plans for a specific topic including learning objectives, instructional aids, and evaluation instruments;

schedule training sessions based on the overall training plan of the authority having jurisdiction; and supervise and coordinate the activities of other instructors.

(B) (No change.)

(12) Fire Service Instructor III personnel. The following general position description for Fire Service Instructor III personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Service Instructor III operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to successfully completing a commission approved course, achieving a passing score on the certification examination, and meeting the qualifications for [the qualifications for basic structural fire protection personnel and] Fire Service Instructor II: develop comprehensive training curricula and programs for use by single or multiple organizations; conduct organizational needs analysis; and develop training goals and implementation strategies.

(B) (No change.)

§421.5. Definitions.

The following words and terms, when used in this standards manual, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (42) (No change.)

(43) Years of experience--For purposes of higher levels of certification or fire service instructor certification:

(A) Except as provided in subparagraph (B) of this paragraph, years of experience is defined as full years of full-time, part-time or volunteer fire service while holding:

(i) - (iii) (No change.)

(iv) for fire service instructor eligibility [~~certification~~] only, a State Firemen's and Fire Marshals' Association Level II Instructor Certification, or an equivalent instructor certification from the Texas Department of State Health Services (DSHS) or the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). Documentation of at least three years of experience as a volunteer in the fire service shall be in the form of a non self-serving sworn affidavit.

(B) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200700533

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 936-3838



CHAPTER 425. FIRE SERVICE INSTRUCTORS

37 TAC §§425.1, 425.3, 425.5, 425.7

The Texas Commission on Fire Protection ("TCFP") proposes amendments to §425.1, pertaining to Minimum Standards for Fire Service Instructor Certification; §425.3, pertaining to Minimum Standards for Fire Service Instructor I Certification; §425.5, pertaining to Minimum Standards for Fire Service Instructor II Certification; and §425.7, pertaining to Minimum Standards for Fire Service Instructor III Certification. The purpose of the proposed amendments are to remove outdated language and add reciprocity for IFSAC seals.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be that there are additional options for certification. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

Comments on the proposed amendments may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of the proposed amendments in the *Texas Register*.

The amendments are proposed under Texas Government Code, §419.008, which provide the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational, training, physical, and mental standards for appointment as fire protection personnel.

Cross reference to statute: Texas Government Code, §419.008 and §419.022(a)(5).

§425.1. Minimum Standards for Fire Service Instructor Certification.

(a) - (d) (No change.)

~~[(e) Individuals who hold Basic Fire Service Instructor or Basic Fire Education Specialist certification on the effective date of this chapter will, upon renewal, be renewed as a Fire Service Instructor I.]~~

~~[(f) Individuals who hold Intermediate Fire Service Instructor or Intermediate Fire Education Specialist or Associate Instructor certification on the effective date of this chapter will, upon renewal, be renewed as a Fire Service Instructor II.]~~

~~[(g) Individuals who hold Advanced Fire Service Instructor or Advanced Fire Education Specialist certification on the effective date of this chapter will, upon renewal, be renewed as a Fire Service Instructor III.]~~

~~[(h) Individuals who hold Master Fire Service Instructor or Master Fire Education Specialist certification on the effective date of this chapter will, upon renewal, be renewed as a Master Fire Service Instructor III.]~~

(e) [(i)] Personnel holding any level of fire service instructor certification must comply with the continuing education requirements specified in §441.21 of this title.

[(j)] A program that has been accredited by the International Fire Service Accreditation Congress (IFSAC) shall be considered for

evaluation for equivalence to the commission's requirements for the corresponding level of certification.]

§425.3. Minimum Standards for Fire Service Instructor I Certification.

(a) In order to become certified as a Fire Service Instructor I an individual must:

(1) have a minimum of three years of experience (as defined in §421.5(43) of this title) in fire protection in one or more or any combination of the following:

(A) (No change.)

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(i) possess valid documentation of accreditation from the International Fire Service Accreditation Congress (IFSAC) as a Fire Instructor I; or

(ii) [(2)] have completed the appropriate curriculum for Fire Service Instructor I contained in Chapter 8 of the commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) of this title; and

(iii) [(3)] successfully pass the applicable commission examination as specified in Chapter 439 of this title; and

(2) [(4)] have completed the field examiner orientation course as specified in Chapter 439 of this title.

(b) (No change.)

§425.5. Minimum Standards for Fire Service Instructor II Certification.

(a) In order to become certified as a Fire Service Instructor II, an individual must:

(1) (No change.)

(2) have a minimum of three years of experience (as defined in §421.5(43) of this title) in fire protection in one or more or any combination of the following:

(A) (No change.)

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(i) possess valid documentation of accreditation from the International Fire Service Accreditation Congress (IFSAC) as a Fire Instructor I, II, or III, or

(ii) [(3)] have completed the appropriate curriculum for Fire Service Instructor II contained in Chapter 8 of the commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) of this title; and

(iii) [(4)] successfully pass the applicable commission examination as specified in Chapter 439 of this title.

(b) (No change.)

§425.7. Minimum Standards for Fire Service Instructor III Certification.

(a) In order to become certified as a Fire Service Instructor III an individual must:

(1) (No change.)

(2) have a minimum of three years of experience (as defined in §421.5(43) of this title) in fire protection in one or more or any combination of the following:

(A) (No change.)

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(i) possess valid documentation of accreditation from the International Fire Service Accreditation Congress (IFSAC) as a Fire Instructor III; or

(ii) [(3)] have completed the appropriate curriculum for Fire Service Instructor III contained in Chapter 8 of the commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) of this title; and

(iii) [(4)] successfully pass the applicable commission examination as specified in Chapter 439 of this title; and either

(I) [(A)] hold as a prerequisite an advanced structural fire protection personnel certification, an advanced aircraft fire protection personnel certification, advanced marine fire protection personnel certification, advanced inspector certification, advanced fire investigator, or advanced arson investigator certification; or

(II) [(B)] have 60 college hours from a regionally accredited educational institution; or

(III) [(C)] hold an associate degree from a regionally accredited educational institution.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700534

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 936-3838



37 TAC §425.13

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Fire Protection ("TCFP") proposes the repeal of §425.13, concerning Individuals Serving as a Coordinator Prior to March 1, 2006. The assessment made by the TCFP for §425.13 is that this section has become obsolete due to the fact that this section is a grandfather clause that is due to expire March 1, 2007.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed repeal is in effect there will be no public benefit. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

Comments regarding this proposed repeal may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

The repeal is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to continuing education programs and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel, and to prescribe the means of presenting evidence of fulfillment of those qualifications.

Cross reference to statute: Texas Government Code, §§419.008, 419.022, and 419.032(b)

§425.13. *Individuals Serving as a Coordinator Prior to March 1, 2006.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700591

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 936-3838



CHAPTER 427. TRAINING FACILITY CERTIFICATION

SUBCHAPTER D. CERTIFIED TRAINING FACILITIES

37 TAC §§427.401, 427.403, 427.405, 427.407, 427.409, 427.411

The Texas Commission on Fire Protection ("TCFP") proposes new Subchapter D to the Texas Administrative Code, Title 37, Chapter 427, Training Facility Certification, consisting of proposed new sections within this new subchapter as follows: §427.401, General Provisions for Training Facilities Not Owned or Operated by the State of Texas or a Political Subdivision of the State of Texas; §427.403, Financial Standards; §427.405, Policy Regarding Complaints; §427.407, School Responsibilities Regarding Instructors; §427.409, Advertising; and §427.411, Cancellations or Suspensions. The purpose of the proposed new subchapter is to require privately owned fire academies

to generally meet the same criteria as other schools that teach developmental career skills for fire personnel.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that, for the first five-year period the new subchapter is in effect, there will be no fiscal impact on state and local governments as these requirements apply only to privately owned schools.

Mr. Soteriou has also determined that, for each of the first five years the new subchapter is in effect, the public benefit anticipated as a result of enforcing the new sections, and will be protected from the unscrupulous and fiscally unsound practices of some private schools. The economic effect for individual, small, and micro business will be the normal cost of obtaining liability insurance and accounting services.

Comments on the proposed new subchapter may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposed new subchapter in the *Texas Register*.

The proposed new subchapter is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose new sections for the administration of its powers and duties, and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational, training, physical, and mental standards for appointment as fire protection personnel.

Cross reference to statute. Texas Government Code, §419.008 and §419.022 are affected by the proposed new subchapter.

§427.401. *General Provisions for Training Facilities Not Owned or Operated by the State of Texas or a Political Subdivision of the State of Texas.*

(a) The provisions in this subchapter apply only to certified training facilities that are not owned or operated by the State of Texas or a political subdivision of the State of Texas.

(b) Training facilities seeking certification under this subchapter must comply with all the provisions of this chapter and must also meet and comply with all commission rules.

(c) Training facilities seeking certification under this subchapter must apply for training facility certification in each discipline they wish to teach.

(d) In order to become a commission approved training facility under this subchapter; the provider must submit a completed commission training facility application for certification with supporting documentation and fees. Supporting documentation will consist of:

(1) descriptions, photos and addresses of where the provider will have their course delivery and materials.

(2) documentation of how the provider will meet all the minimum requirements for each discipline for which it seeks certification.

(3) complete and correct financial statements, as specified in this subchapter, demonstrating the facility is financially stable and capable of fulfilling its commitments for training.

(4) statement of ownership which identifies the owners, stockholders, partners, representatives, management, trustees, board members.

(5) documentation showing registration with the Texas Secretary of State as a business.

§427.403. Financial Standards.

(a) Definitions Relating to Financial Requirements.

(1) Balance Sheet--A statement of financial position or statement of condition, showing the status of assets, liabilities and owner equity for a defined period i.e., monthly, quarterly, etc.

(2) current ratio--ability to pay current obligations from current assets.

(3) Generally Accepted Accounting Principles (GAAP)--Conventions, rules and procedures that define accepted accounting practices to include both broad guidelines as well as detailed procedures.

(4) Generally Accepted Auditing Standards (GAAS)--Conventions, rules and procedures that define accepted audit practices.

(5) Stockholders Equity (net worth)--amount by which assets exceed liabilities.

(6) sworn statement--A notarized statement including the following language: "I swear or affirm that the information in these statements is true and correct to the best of my knowledge."

(7) unearned income (tuition) affidavit--A statement of income received but not yet earned during the current or most recent fiscal year. This is usually shown as a liability on a balance sheet, assuming it will be credited to income within the normal accounting cycle.

(b) The balance sheet required in this subchapter shall reflect the following:

(1) positive equity or net worth balance;

(2) unearned tuition as a current liability;

(3) a current ratio of at least one-to-one; (current assets divided by current liabilities) and

(4) Stockholder's Equity or net worth exceeding the amount shown for goodwill, if applicable, under assets in the balance sheet.

(c) Compilations shall be accompanied by the owner's sworn statement.

(d) All financial statements shall identify the name, license number, and licensing state of the accountant associated with the statements and be in accordance with GAAP.

(e) A school that maintains a financial responsibility composite score that meets the general standards established in federal regulations by the U.S. Department of Education for post secondary institutions participating in student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, shall be considered to have met the financial standards of this subchapter.

(f) A school that qualifies under an alternative standard but not the general standard of these federal regulations will not be considered to have met the financial standards of this subchapter unless the school meets the other requirements stated in this subchapter.

(g) Requirements for Original Approvals.

(1) The owner shall furnish the Commission with the following:

(A) a school owned by a sole proprietor must submit a reviewed personal balance sheet stating the disclosure of payments for the next five years to meet debt agreements as required by GAAP; or

(B) all other ownership structures must submit an audited balance sheet consistent with GAAP and GAAS and certified by an accountant.

(2) The facility shall submit a balance sheet, a list of the expected school-related expenses for the first three months of operation of the school; a sworn statement signed by the owner affirming the availability of sufficient cash to cover projected expenses at the date of the certification. Projected expenses may include the following:

(A) employee salaries, listed by position title, including withholding and unemployment taxes, and other related expenses;

(B) lease or rent payments for listed equipment;

(C) lease or rent payments for facilities;

(D) accounting, legal and other specifically identified professional fees;

(E) an estimate of expenses such as advertising, travel, textbooks, office and classroom supplies, printing, telephone, utilities, taxes;

(F) a projection of the gross amount of tuition and fees to be collected during each of the first two years of operation; and

(G) such other evidence as may be deemed appropriate by the commission to establish financial stability.

(h) Prior to a change in ownership of a facility, the purchaser shall furnish the Commission a current balance sheet meeting the requirements outlined in this subchapter for original approvals, excluding the sufficient cash requirement for initial expenses. The purchaser shall furnish any other evidence deemed appropriate by the commission to establish financial stability.

(i) The deletion or addition of any person that would be considered an owner is considered a change in facility ownership. The facility must notify the commission of the change in ownership within 14 days of the transaction.

(j) The commission may require submission of a full application for approval of a change in ownership.

(k) Management agreements must be disclosed to the commission. Parties to a management agreement shall be of good reputation and character.

(l) The deletion, addition or moving of a facility will be reported to the commission 14 days prior to the transaction.

(m) If the commission determines that the deletion, addition or moving of a facility presents an unreasonable transportation hardship which would prevent a student from completing the training at the new location, the school shall provide a full refund of all monies paid and a release from all obligations to the student.

(n) The commission shall be notified in writing of any legal action to which the facility, any of its owners, representatives or management employees is a party.

(o) The notification shall be within 14 days after the action is known to be filed or the facility, owner, representative or management employee is served.

(p) The facility shall include, with the required notice, a file-marked copy of the petition, complaint, or other legal instrument, including copies of any judgments.

(q) If the commission determines that reasonable cause exists to question the validity of any financial information submitted, or the

financial stability of the facility, the commission may require at the facility's expense:

(1) an audit of the facility that has been certified by an accountant; or

(2) The owner must furnish any other evidence deemed appropriate by the commission to establish financial stability.

(r) The entity certified under this subchapter shall maintain, in a permanent format that is acceptable and readily accessible to the commission, a record of any funds received from, or on behalf of, the student. The entity shall clearly identify the payer, the type of funding, and the reason for the charges. These records shall be posted and kept current.

(s) An entity certified under this subchapter shall issue written receipts of any charges or payments to the student and maintain such records for review upon request by the commission. Each separately charged item shall be clearly itemized on the student-signed receipt.

(t) An entity certified under this subchapter shall develop and maintain a cancellation and refund policy.

(u) The student shall be entitled to a full refund of all monies paid to the facility if classes or courses are cancelled by the facility.

(v) Classes or courses cancelled by the student, refund policies will be based on a prorated basis or percentage of the class or program completed by the student.

(w) An entity certified under this subchapter shall comply with §437.3 of this title concerning certification and renewal fees.

(x) Upon application for renewal, an entity certified under this subchapter will provide a balance sheet with a sworn statement.

(y) Liability insurance will be addressed after all comments have been received from the public.

§427.405. Policy Regarding Complaints.

(a) Complaints. The entity shall:

(1) submit a written grievance procedure designed to resolve disputes between current and former students and the school for commission approval;

(2) provide a copy of the grievance procedure to each student and maintain proof of such delivery;

(3) maintain records regarding grievance filings and resolutions; and

(4) diligently work to resolve all complaints at the local school level.

(b) Investigations.

(1) The commission may investigate a complaint about an entity and may determine the extent of investigation needed by considering various factors, such as:

(A) the seriousness of the alleged violation;

(B) the source of the complaint;

(C) the school's history of compliance and complaints;

(D) the timeliness of the complaint; and

(E) any other reasonable matter deemed appropriate.

(2) The Commission may require documentation or other evidence of the violation before initiating a complaint investigation.

§427.407. School Responsibilities Regarding Instructors.

(a) The facility Chief Training Officer (CTO) shall ensure that there are an appropriate number of instructors.

(b) The facility CTO shall ensure that instructors are qualified to instruct in the subjects they are teaching or assisting.

(c) The facility CTO shall ensure continuity of instruction and that instructors provide students with a quality education.

(d) The facility CTO shall formally evaluate each instructor in writing at least annually and shall make the evaluations available for review by the commission.

(e) The facility CTO shall ensure that students are allowed the opportunity to formally evaluate each instructor in writing and make the evaluations available for review by the commission.

§427.409. Advertising.

(a) General Information for Advertising.

(1) A school shall not make deceptive statements in attempting to enroll students.

(2) The Commission may require a school to furnish proof to the Commission of any of its advertising claims.

(b) Advertisement Method.

(1) A school may advertise for prospective students under "instruction," "education," "training," or a similarly titled classification.

(2) No school advertisements shall use the word "wanted," "help wanted," or "trainee," either in the headline or the body of the advertisement, nor shall any advertisement indicate, in any manner, that the school has or knows of employment of any nature available to prospective students; only "placement assistance," if offered, may be advertised.

(3) A school shall not use terms to describe the significance of the approval that specify or connote greater approval. Terms that schools may not use to connote greater approval by the Commission include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended." A school shall not use the words "guarantee," "guaranteed," or "free" unless approved in writing by the Commission.

(4) Any advertisement that includes a reference to awarding of credit hours shall include the statement, "limited transferability." Where a school has an arrangement with a college or university to accept transfer hours, such information may be advertised, but any limitations shall be included in the advertisement.

(c) Advertisement Content.

(1) Advertisement content shall include, and clearly indicate, the full and correct name of the school and its address, including city, as they appear on the certificate of approval.

(2) Advertisements shall not include:

(A) statements that the school or its programs are accredited unless the accreditation is that of an agency recognized by the United States Department of Education;

(B) statements that the school or its courses of instruction have been approved unless the approval can be substantiated by an appropriate certificate of approval issued by an agency of the state or federal government;

(C) statements that represent the school as an employment agency under the same name, or a confusingly similar name, or at the same location of the school; or

(D) statements as being commission-approved or IF-SAC approved in order to solicit students prior to receiving actual com-

mission approval. Any such activity by the school, prior to the Commission's approval of the training course, shall constitute misrepresentation by the training facility and shall entitle each student in the course to a full refund of all monies paid and a release from all obligations to the student".

(3) A school holding a franchise to offer specialized programs or subjects not available to other schools shall not advertise such programs in such a manner as to diminish the value and scope of programs offered by other schools not holding such a franchise. Advertising of special subjects or programs offered under a franchise shall be limited to the subject or programs offered.

(4) A school shall not use endorsements, commendations, or recommendations by students in favor of a school except with the consent of the student and without any offer of financial or other material compensation. Endorsements shall bear the legal or professional name of the student.

(5) A school shall not use a photograph, cut, engraving, illustration or graphic in advertising in such a manner as to:

(A) convey a false impression of size, importance, or location of the school, equipment, or facilities associated with the school, or

(B) circumvent any of the requirements of this subchapter regarding written or oral statements.

(6) Every advertisement must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.

(d) Financial Incentives.

(1) Advertisements shall not:

(A) state that students shall be guaranteed employment while enrolled in the school;

(B) state that employment shall be guaranteed for students after graduation; or

(C) misrepresent opportunities for employment upon completion of any program; or

(D) contain dollar amounts as representative or indicative of the earning potential of graduates unless those dollar amounts have been published by the United States Department of Labor. This provision shall not be construed as prohibiting the school from providing earning potential to the student individually on the student's receipt of enrollment policies or other such Commission-approved document.

(e) Advertisements for student tuition loans shall:

(1) contain the language "financial aid available, if qualified";

(2) appear in type no larger than the font used for the name of the school and in similar color and style; and

(3) does not preclude disclosure of the school's eligibility under the various state and federal loan programs.

(f) Advertisement Monitoring.

(1) The Commission may order corrective action to counteract the effect of advertising in violation of the Act or rules, including:

(A) retraction by the school of such advertising claims published in the same manner as the claims themselves; and

(B) cancellation of telephone numbers without an automatic forwarding message.

(2) As corrective action for violations of the Act or rules, the Commission may require schools to submit all advertisements to the Commission for pre-approval at least 30 days before proposed submission of the advertisements to the advertising medium.

(3) Nothing in these guidelines shall prohibit release of information to students as required by a state or federal agency.

§427.411. Cancellations or Suspensions.

(a) If an approved course of instruction is discontinued for any reason, the Commission shall be notified within 72 hours (9 days) of discontinuance and furnished with the names and addresses of any students who were prevented from completion of the course of instruction due to discontinuance. Should the school fail to make arrangements satisfactory to the students and the Commission for the completion of the course of instruction, the full amount of all tuition and fees paid by the students are then due and refundable. Any course of instruction discontinued will be removed from the list of approved courses of instruction.

(b) The Commission may suspend enrollments in a particular course of instruction at any time the Commission finds cause. For purposes of this subsection, cause includes, but is not limited to:

(1) inadequate instruction;

(2) unapproved or inadequate curriculum;

(3) inadequate equipment; or

(4) inadequate facilities.

(c) If a school begins teaching a course of instruction or revised course of instruction that has not been approved by the Commission, the Commission may require the school to refund to the enrolled students all or a portion of the tuition fees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700535

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 936-3838



CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §429.207

The Texas Commission on Fire Protection ("TCFP") proposes an amendment to the Texas Administrative Code, Title 37, Chapter 429, Minimum Standards for Fire Inspectors, §429.207(3), Minimum Standards for Advanced Fire Inspector Certification--New Track. The purpose of the proposed amendment is to address applicable job performance requirements as identified in NFPA 1031, Professional Qualifications for Fire Inspector and Plan Examiner.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that, for the first five-year period the proposed amendment is in effect, there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that, for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be that the public has access to an alternative method for completing training for certification requirements.

Comments on the proposed amendment may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of the proposed amendment in the *Texas Register*.

This amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to continuing education programs and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel, and to prescribe the means of presenting evidence of fulfillment of those qualifications.

Cross reference to statute. Texas Government Code, §419.008, §419.022, and §419.032(b) are affected by the proposed new subchapter.

§429.207. Minimum Standards for Advanced Fire Inspector Certification--New Track.

Applicants for Advance Fire Inspector Certification must complete the following requirements:

(1) - (2) (No change.)

(3) ~~show successful completion of [complete the Commission approved] Fire Inspector III and Plans Examiner II courses meeting the applicable job performance requirements as identified in NFPA 1031, Professional Qualifications for Fire Inspector and Plan Examiner[; as specified in Chapter 4 of the commission's Certification Curriculum Manual and successfully pass the examinations in accordance with Chapter 439 of this title (relating to Examination for Certification)]~~.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700536

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: April 1, 2007

For further information, please call: (512) 936-3838

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER C. GRANT POLICIES

DIVISION 1. GENERAL GRANT GUIDELINES

13 TAC §2.120

The Texas State Library and Archives Commission withdraws the proposed new §2.120 which appeared in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9164).

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700523

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: February 15, 2007

For further information, please call: (512) 463-5459



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING

SUBCHAPTER G. EXAMINATIONS

22 TAC §133.67

The Texas Board of Professional Engineers has withdrawn from consideration the proposed amendment to §133.67 which ap-

peared in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7917).

Filed with the Office of the Secretary of State on February 16, 2007.

TRD-200700543

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: February 16, 2007

For further information, please call: (512) 305-7016



CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §137.59

The Texas Board of Professional Engineers has withdrawn from consideration the proposed amendment to §137.59 which appeared in the December 8, 2006, issue of the *Texas Register* (31 TexReg 7988).

Filed with the Office of the Secretary of State on February 16, 2007.

TRD-200700544

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: February 16, 2007

For further information, please call: (512) 305-7016



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 60. TEXAS CRIME VICTIM SERVICES GRANT PROGRAMS

The Office of the Attorney General (OAG) adopts amendments to Subchapter A (General Provisions and Eligibility), §§60.1, 60.3, 60.5 - 60.7, 60.9 - 60.13 and new §§60.14 - 60.17; amendments to Subchapter B (Application, Review and Award Process), §§60.100 - 60.103; Subchapter C (Grant Budget Requirements), §§60.200 - 60.209; and Subchapter D (Required Attachments), §60.300 and §60.301, relating to rules governing certain Texas Crime Victim Services Grant Programs concerning the OVAG and VCLG OAG grant programs. The amendments and new rules, except for §60.6, are adopted without changes to the proposed text as published in January 12, 2007, issue of the *Texas Register* (32 TexReg 141). Therefore, all sections, except §60.6, will not be republished.

According to Article I, Section 31 of the Texas Constitution, the Texas Compensation to Victims of Crime Fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance. Article 56.541(e) of the Texas Code of Criminal Procedure provides that the OAG may use funds from the Texas Compensation to Victims of Crime Fund for grants or contracts supporting crime victim-related services or assistance. Subsection (f) of the Article authorizes the OAG to adopt rules necessary to carrying out the Article's provisions.

The amendments and new rules are adopted to ensure that the rules are updated to accurately implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of certain OAG grants or contracts supporting crime-victim-related service or assistance. The amendments and new rules are adopted to clarify the agency's practices and to make the rules more accessible, understandable and usable.

Section 60.1 adds new definitions.

Section 60.3 clarifies the statutory source of funds.

Section 60.5 changes the title of the section; clarifies the purpose of grant funds and grant funding decisions; provides that funding decisions will support the efficient and effective use of public funds; and provides that the OAG may award OVAG funds to programs that would otherwise be eligible for funding under another OAG grant program.

Section 60.6 is adopted with a change from the proposed version. The change is to correct a typographical error to the word

"grant." Otherwise, §60.6 changes the title of the section; clarifies the purposes for awards and use of OVAG funds for victim-related services or assistance; and clarifies that the award, purposes of an award and use of VCLG funds for victim assistance coordinator and/or crime victim liaison positions as consistent with Texas Code of Criminal Procedure, Article 56.04.

Section 60.7 uncapitalizes the term "program".

Section 60.9 changes the title of the section; provides that the OAG may require cash and/or in kind match for grants; that the amount of an award and match requirements are determined solely by the OAG; and that the OAG reserves the right to alter the required match for any funded program. Section 60.9 also provides that all non-government OVAG program must have a volunteer component.

Section 60.10 changes the title of the section; clarifies the minimum amount of funding for VCLG and OVAG programs, clarifies that the OAG may establish different minimum and maximum amounts of funding for an OVAG statewide program; clarifies that grant contracts may be awarded; provides that the amount of an award is determined solely by the OAG, the OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

Section 60.11 changes the title of the section; provides generally that the grant contract may be awarded for any number of months up to a two year period; and that the grantee may be required to submit additional documentation relating to a subsequent fiscal year of the grant contract period; provides that the OAG may base its decision on subsequent fiscal year funding amounts on the grantee's prior performance, including the timeliness and thoroughness of reporting, effective and efficient use of grant funds and the success of the program in meeting its goals.

Section 60.12 establishes that a grant contract is not a right or entitlement and that there is no commitment by the OAG that a grant contract, once funded, will receive subsequent funding.

Section 60.13 changes the title of the section; clarifies that the OAG may fund grant program at amounts higher or lower than provided for in the chapter based on availability of funds and particularized need; and confirms the OAG may award a grant contract or re-designate a grant contract once awarded to a different funding source than the grant for which the applicant filed an application or received funding.

Section 60.14 establishes an applicant registration requirement for applicants to register their intent to apply for funding and that grant applications will not be considered if an applicant registration is not timely filed with the OAG and that the OAG will notify an applicant if an application is not considered due to failure to timely file the applicant registration.

Section 60.15 establishes a procedure for the timely filing of documents with the OAG.

Section 60.16 requires grantees to comply with all applicable state and federal statutes, rules, regulations, and guidelines, including, but not limited to, the Uniform Grant Management Standards (UGMS) and the applicable OMB Circulars and applies those requirements to OVAG and VCLG grants, including grants to non-profit corporations.

Section 60.17 provides for the transmittal or required submission of notices, forms or other documents and information via the Internet or other electronic means.

Section 60.100 clarifies the OAG will publish a Request for Applications and establishes the minimum information to be provided in a Request for Applications. Section 60.100 establishes that after the Request for Applications is published, the Application Kit will be available to the public; requires an application to be submitted, filed and received by the OAG as established in the Request for Applications. Section 60.100 establishes for a filed application to be initially screened for eligibility, and if eligible, to be evaluated and reviewed, and a grant decision made. Section 60.100 states that providing false information, knowingly or unknowingly, on a grant application may cause an application to be denied or cause the grant contract, once awarded, to be terminated.

Section 60.101 changes the title of the section; establishes that applications initially screened as ineligible will not be scored further and establishes the grounds for determining ineligibility. Section 60.101 allows for the OAG to designate teams to evaluate and review eligible applications; and provides that evaluation factors will be developed to assess the award criteria; allows the OAG to contact an applicant to provide additional information and provides that there are several steps in the evaluation and review process and a decision to deny an application may be made at any point during the process.

Section 60.102 changes the title of the section; clarifies that the OAG will notify the applicant in writing of a grant decision. Section 60.102 provides that the OAG may utilize a grant contract document or a notice of grant document to award a grant and the applicant will be given a deadline to act to accept the grant award; clarifies that the OAG may add special conditions to the grant award and until the special conditions are satisfied or resolved, they will affect the grantee's ability to receive funds.

Section 60.103 changes the title of the section; clarifies that all grant decisions rest completely within the discretionary authority of the OAG; and provides that the award of a grant contract to a program shall not commit or obligate the OAG in any way to make any additional, supplemental, continuation, or other award to that program.

Section 60.200 lists the eligible budget categories for a grant budget and requires all applicants to submit a completed budget on the OAG prescribed form. Section 60.200 provides that the grants are reimbursement only grants, with grantees being reimbursed for authorized actual expenditures substantiated by documentation submitted to the OAG. Section 60.200 does not allow an individual paid with grant funds to receive dual compensation for the same work. Section 60.200 requires all grantees, including nonprofit entities and local governmental agencies, to follow the rules and requirements of UGMS and all applicable OMB federal circulars. Section 60.200 requires a documented method for allocation of direct costs and adequate supporting receipts and records be maintained and requires all budget items

to be reasonable and necessary and allocated proportionately within each budget category. Section 60.200 provides the OAG is not obligated to fund budget items at the amounts requested or continue to fund budget items once a grant has been awarded.

Section 60.201 clarifies the personnel budget category and requires any changes to job duties or employment status of a grant funded position to be reported to the OAG immediately and prohibits the use of grant funds to pay any portion of the salary or any other compensation for an elected government official.

Section 60.202 clarifies the definition of fringe benefits and use of grant funds to pay fringe benefits.

Section 60.203 clarifies the definition of professional and consultant services and use of grant funds for those services and requires any contract or agreement for those services to be in writing and consistent with Texas contract law and requires grantees to maintain adequate documentation supporting the expenses and to establish a contract administration and monitoring system.

Section 60.204 provides that grant funds may be reimbursed according to Texas State Travel Guidelines and clarifies that travel must relate directly to the delivery of services that supports the funded program.

Section 60.205 provides that grant funds may not be used to fund the purchase or lease of vehicles.

Section 60.206 clarifies the definition of supplies and use of grant funds by a grant program for those items.

Section 60.207 clarifies the definition of Other Direct Operating Expenses and the use of grant funds for those items and clarifies that grant funds may not be used to purchase food and beverages.

Section 60.208 no longer allows indirect costs as a budget item for the relevant OAG grant programs.

Section 60.209 clarifies the list of items that are unallowed costs; clarifies that food and beverage costs are limited to those allowed under the Texas State Travel Guidelines and prohibits the use of grants funds to purchase or lease vehicles, pay for travel that is unrelated to the direct delivery of services that supports the OAG funded program or for any unallowable costs set forth in state or federal cost principles.

Section 60.300 provides that each Application Kit will have a Comprehensive Certification and Assurances Form, which will include certain assurances and certifications forms that applicants must submit with the grant application.

Section 60.301 provides that a resolution must be submitted with the grant application; and modifies the specific requirements of the resolution from the applicable governing body.

No comments were received regarding the amendments and the new rules.

SUBCHAPTER A. GENERAL PROVISIONS AND ELIGIBILITY

1 TAC §§60.1, 60.3, 60.5 - 60.7, 60.9 - 60.17

The amendments and new rules are adopted under the Texas Code of Criminal Procedure, Article 56.541(f), which authorizes the Office of the Attorney General to adopt rules reasonable and necessary to implement Article 56.541, and in order to use

money for grants or contracts that support crime victim-related services or assistance.

The amendments and new rules affect Texas Code of Criminal Procedure, Article 56.541(e).

§60.6. OVAG and VCLG Eligible Purpose Areas.

(a) Grant contracts awarded under the OAG OVAG program may be used for victim-related services or assistance for the following purposes:

(1) providing direct victim services including, but not limited to, counseling, crisis intervention, assistance with Crime Victim's Compensation, legal assistance, victim advocacy, and information and referral;

(2) providing outreach or community education to help identify crime victims who might not otherwise be reached and provide or refer them to needed services;

(3) connecting crime victims to services for the purpose of supporting or assisting in their recovery;

(4) training professionals and volunteers to improve their ability to inform victims of their rights, to assist victims in their recovery, or to establish a continuum of care for victims;

(5) providing administrative functions to OAG designated grants;

(6) other purposes, consistent with state law, that are authorized by applicable federal grants; or

(7) other support for victim related services or assistance as determined by the OAG.

(b) Grant contracts awarded under the OAG VCLG program shall be used for victim assistance coordinator and/or crime victim liaison positions for the purposes set forth in Texas Code of Criminal Procedure, Article 56.04.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stacey Napier

Deputy Attorney General

Office of the Attorney General

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For further information, please call: (512) 463-2096



SUBCHAPTER B. APPLICATION, REVIEW AND AWARD PROCESS

1 TAC §§60.100 - 60.103

The amendments are adopted under the Texas Code of Criminal Procedure, Article 56.541(f), which authorizes the OAG to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money from the Texas Compensation to Victims of Crime Fund for grants or contracts that support crime victim-related services or assistance.

The amendments affect Texas Code of Criminal Procedure, Article 56.541.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. GRANT BUDGET REQUIREMENTS

1 TAC §§60.200 - 60.209

The amendments are adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money from the Texas Compensation to Victims of Crime Fund for grants or contracts that support crime victim-related services or assistance.

The amendments affect Texas Code of Criminal Procedure, Article 56.541.

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SUBCHAPTER D. REQUIRED ATTACHMENTS

1 TAC §§60.300, §60.301

The amendments are adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money from the Texas Compensation to Victims of Crime Fund for grants or contracts that support crime victim-related services or assistance.

The amendments affect Texas Code of Criminal Procedure, Article 56.541.

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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 95. SHARE AND DEPOSITOR INSURANCE PROTECTION

SUBCHAPTER A. INSURANCE REQUIREMENTS

7 TAC §95.100

The Credit Union Commission adopts the repeal of existing rule §95.100 concerning account insurance. The proposed repeal was published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8951).

The adopted repealed rule is replaced by new §95.100 and §95.101 which provide definitions for the relevant terms and specify the requirement that credit unions must obtain share and deposit insurance protection for its members. The requirement that a credit union maintain account insurance has been moved to new §95.101.

The rule is repealed as a result of the Credit Union Department's general rule review.

A public hearing on the proposed repeal was held at the Department offices on Friday, January 19, 2007. No oral or written comments were received.

The repeal is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §15.410, which requires credit unions to maintain share and deposit insurance protection for its members and depositors.

The specific section affected by the repeal is Texas Finance Code, §15.410.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Harold E. Feeney

Commissioner

Credit Union Department

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7 TAC §§95.100 - 95.109

The Credit Union Commission adopts new §§95.100 - 95.109, concerning insurance requirements under Subchapter A, with no changes to the text published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8951). The adopted new rules update and replace the old §95.100 concerning account insurance.

Section 95.100 provides definitions for the relevant terms found in the various sections of this subchapter.

Section 95.101, concerning share and depositor insurance protection, incorporates and expands on the requirements of old §95.100 that a credit union maintain share and deposit insurance. The adopted new rule specifies the requirement that credit unions must obtain share and deposit insurance for the protection of its members and indicates that the insurance protection may be obtained from NCUA or from an insuring organization approved by the Credit Union Department (Department).

Section 95.102 concerns the qualifications for an insuring organization. The adopted new rule prescribes requirements that an organization must meet to provide share and deposit insurance protection for state-chartered credit unions. The rule adoption provides that the insuring organization must be in good standing in its state of domicile, that it receive regular examinations from its state of domicile, and that it have adequate capital for its prospective business. The adopted rule also sets out departmental requirements and fees.

Section 95.103 describes the powers and duties granted to an approved insuring organization in carrying out its general purposes as a provider of share and deposit insurance protection.

Section 95.104 stipulates that an insuring organization must notify the Department when it receives an application for participation by a credit union and when a credit union terminates participation in the insuring organization's program.

Section 95.105 concerns reports filed by an insuring organization. The adopted rule specifies that an insuring organization file with the Commissioner annually audited financial statements, as well as periodic reports on the capital adequacy of the insuring organization.

Section 95.106 concerns the amount of insurance protection a credit union must maintain. The new rule adoption provides that a participating credit union must maintain insurance for its share and deposit accounts in an amount that is not less than the insurance coverage it would have under NCUSIF or its successor. The adopted rule also sets out the conditions for a credit union to issue membership shares that are not guaranteed and are subordinate to all other claims.

Section 95.107, concerning the sharing of confidential information, allows the Department, with the consent of the participating credit union, to share examinations and other records with an in-

insuring organization to allow the insuring organization to assess the financial condition of the participating credit union.

Section 95.108, concerning examinations, provides that the Department may conduct examinations and investigations of an insuring organization, either within or outside the state. The rule adoption also provides that the Department shall perform a regular examination of each insuring organization.

Section 95.109 concerns fees and charges. The new rule adoption provides that the insuring organization pay the costs of an examination and permits the Department to engage professionals to perform examinations or investigations at the expense of the insuring organization.

The new rules are adopted as a result of the Department's general rule review.

A public hearing on the proposed new rules was held at the Department offices on Friday, January 19, 2007. No oral comments were received.

Written comments in support of the new rules were received from Kelli Larsen of Firstmark Credit Union. The commenter stated that the provision for private share insurance is in the best interest of credit unions. The commenter requested clarification on §95.100(d), stating that the definition appeared to limit the insuring organization to providing aid and financial assistance only to credit unions that are in the process of liquidation or are incurring financial difficulty. The Department responds that the definition correctly describes the function of the insuring organization as the organization would not provide any aid until a credit union is in financial difficulty or in liquidation.

Written comments from the Texas Department of Insurance generally supported the rules but suggested that §95.102 be rewritten to require that the insuring organization be authorized to write share insurance by the Texas Department of Insurance. The Texas Credit Union Department declines to make the suggested amendment. The Texas Credit Union Department does not consider share insurance an insurance product nor is it regulated as insurance in any of the nine states with a similar share insurance program. Additionally, the Internal Revenue Service has ruled that share insurance is not insurance and places insuring organizations under §501(c)(6) of the Internal Revenue Code.

The Department of Insurance also noted that the rules do not address any enforcement action the Texas Credit Union Department might take if the insuring organization becomes financially unsound or engages in wrongdoing. This comment is beyond the scope of these new rules but the concerns of the Department of Insurance have been addressed in proposed new §95.110.

The new rules are adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code, §15.410, which requires credit unions to provide share and deposit insurance protection for credit union members and depositors.

The specific section affected by the adopted new rules is Texas Finance Code, §15.410.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. LIQUIDATING AGENTS

7 TAC §95.200

The Credit Union Commission adopts amendments to §95.200 concerning notice of taking possession with no changes to the text published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9103). The adopted amendments add a requirement that the Credit Union Department (Department) notify the NCUA or the insuring organization when it takes possession of the property and assets of a credit union. The adopted amendments also provide that the NCUA or the insuring organization is subrogated to all rights of the member up to the amount paid by the NCUA or the insuring organization to the member.

The amended rules are adopted as a result of the Department's general rule review.

A public hearing on the proposed amended rules was held at the Department offices on Friday, January 19, 2007. No oral comments were received.

Written comments in support of the amendments were received from Kelli Larsen of Firstmark Credit Union. The commenter stated that it supported the Department's regulation of share insurance to guarantee the safety and soundness of credit unions and to protect member deposits.

The amendments are adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code, §15.410, which requires a credit union to maintain share and deposit insurance protection for its members and depositors.

The specific section affected by the amended rule is Texas Finance Code, §15.410.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §95.205

The Credit Union Commission adopts new §95.205 concerning the liability of the state for any deficiency, without changes to the text published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9103). The new rule clarifies that the state is not liable for the payment of any funds to a credit union by reason of any acts or omissions of the NCUA or an insuring organization. The rule further provides that the state is not liable for any deficiency of any credit union in the event the NCUA or insuring organization is unable to pay such deficiency.

The new rule is adopted as a result of the Department's general rule review.

A public hearing on the proposed new rule was held at the Department offices on Friday, January 19, 2007. No oral comments were received.

Written comments in support of the new rule were received from Kelli Larsen with Firstmark Credit Union. The commenter stated that the proposed new and amended rules appeared to accomplish the task of protecting member deposits.

The new rule is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §15.410, which requires a credit union to maintain share and deposit insurance protection for its members and depositors.

The specific section affected by the new rule is Texas Finance Code, §15.410.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. GUARANTY CREDIT UNION

7 TAC §§95.300 - 95.302, 95.304, 95.305

The Credit Union Commission adopts amendments to §§95.300 - 95.302, 95.304, and 95.305 of Subchapter C, Guaranty Credit Union, without changes to the text published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9104). The Department is making minor changes to clarify the rules governing a guaranty credit union chartered by the state.

The amendments to §95.300, concerning the establishment of a share and deposit guaranty credit union, make it clear that prior to commencing business in this state a guaranty credit union must file a written application with the commissioner. The amendments also change the term chartering to incorporation.

Section 95.301, concerning the authority of a guaranty credit union, also is amended to change the language from charter to certificate of incorporation.

Section 95.302, concerning powers of a guaranty credit union, is amended to change the language from member credit union to participating credit union to avoid confusion with a natural person credit union.

Section 95.304, concerning capital contributions, membership investment shares, and termination, is amended to add requirements for a guarantee fund maintained by a guaranty credit union and to further require each participating credit union to maintain a membership investment share with a guaranty credit union. The amendment defines what may be included in the guaranty fund. In addition the term member credit union is changed to participating credit union for consistency and clarification.

The amendment to §95.305, concerning the financial statements, accounting procedures, and reports for a guaranty credit union, changes the requirement for an actuarial study of the capital adequacy of the credit union from annually to at least once every three years and aligns it with the equivalent requirement for insuring organizations in Subchapter A.

The amendments are adopted as a result of the Department's general rule review.

A public hearing on the proposed new rules was held at the Department offices on Friday, January 19, 2007. No oral comments were received.

Written comments supporting the amendments were received from Kelli Larsen of Firstmark Credit Union. The commenter supported the regulation of share insurance to guarantee the safety and soundness of credit unions and to protect member deposits.

The amended rules are adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §15.410, which requires a credit union to maintain share and deposit insurance protection for its members and depositors.

The specific section affected by the amended rules is Texas Finance Code, §15.410.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §95.306

The Credit Union Commission adopts without change the repeal of §95.306 concerning requirements of a member credit union. The proposed repeal was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9106). The repealed rule is being moved to a new Subchapter D, Disclosure for Non-Federally Insured Credit Unions, and rewritten to give credit unions guidance as to the contents and locations of the notices of the insurance status of their accounts.

The rule is repealed as a result of the Department's general rule review.

A public hearing on the proposed repeal was held at the Department offices on Friday, January 19, 2007. No oral comments were received.

Written comments on the proposed repeal were received from Kelli Larsen with Firstmark Credit Union. The commenter generally supported the rules regarding private share insurance.

The repeal is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §15.410, which requires credit unions to maintain share and deposit insurance protection for credit union members and depositors.

The specific section affected by the repeal is Texas Finance Code, §15.410.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §95.310

The Credit Union Commission adopts new §95.310 concerning fees and charges without changes to the text published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9106). The new rule clarifies that a guaranty credit union pays the same operating fees as a natural person credit union. The new rule also provides that the Department may engage professionals to perform the examination or investigation of the guaranty credit union at the expense of the credit union.

The new rule is adopted as a result of the Department's general rule review.

A public hearing on the proposed new rule was held at the Department offices on Friday, January 19, 2007. No oral comments were received.

Written comments supporting the new rule were received from Kelli Larsen with Firstmark Credit Union. The commenter agreed

that the Department should regulate the insuring organizations to protect the safety and soundness of credit unions.

The new rule is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §15.410, which requires credit unions to maintain share and deposit insurance.

The specific section affected by the new rule is Texas Finance Code, §15.410.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. DISCLOSURE FOR NON-FEDERALLY INSURED CREDIT UNIONS

7 TAC §95.400

The Credit Union Commission adopts new §95.400 concerning the notice requirements for non-federally insured credit unions without changes to the text published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9107). The rule specifies that non-federally insured credit unions shall give appropriate notice of the insurance status of its share and deposit accounts. The new rule also prescribes the contents and locations of the notice and provides that notice of the insurance status must be given to members at the time a share or deposit account is established.

The new rule is adopted as a result of the Department's general rule review.

A public hearing on the proposed new rule was held at the Department offices on Friday, January 19, 2007. No oral comments were received.

Written comments in support of the new rule were received from Kelli Larsen with Firstmark Credit Union. The commenter believed that the provision of private share insurance is in the best interest of credit unions.

The new rule is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §15.410, which requires credit unions to maintain share and deposit insurance.

The specific section affected by the new rule is Texas Finance Code, §15.410.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER C. GRANT POLICIES

The Texas State Library and Archives Commission adopts new 13 TAC Chapter 2, Subchapter C, §§2.110 - 2.119, 2.210 - 2.212, 2.310 - 2.312, 2.410 - 2.412, 2.510 - 2.512, 2.610 - 2.612, 2.710 - 2.712, and 2.810 - 2.815, relating to grant policies and procedures for the management of grants distributed or administered by the agency. Sections 2.110, 2.118, 2.212, 2.311, 2.411, 2.511, 2.512, and 2.611 are adopted with changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9164). Sections 2.111 - 2.117, 2.119, 2.210, 2.211, 2.310, 2.312, 2.410, 2.412, 2.510, 2.610, 2.612, 2.710 - 2.712, and 2.810 - 2.815 are adopted without changes and will not be republished.

The new rules are being adopted in coordination with a repeal of existing rules for the administration of agency grants.

A number of comments were received.

Two regional library systems recommended a revision to §2.611 to remove the limitation of this division to state fiscal years 2008 and 2009. The agency concurs and has revised the rule language.

The regional library systems also recommended an addition to §2.612 to specify that the Library Systems Act Advisory Board score the proposals. Because standardization of grant policies and procedures was one of the primary desired outcomes of revising these rules, the agency does not concur.

One public library director stated that the rules favor larger libraries at the expense of smaller libraries; however, no specific changes are recommended. Because the agency has had many years of experience in awarding competitive grants and this experience shows that smaller libraries have been able to plan and present competitive proposals, the agency does not concur.

One public library director stated that the rules are too long for smaller libraries to read, especially since they are too busy checking out books. The agency understands this concern and will issue guidelines for each type of grant that will not

require people to read and understand the administrative rules as adopted.

One public library director opposed allowing other types of libraries the opportunity to apply for grants. While the agency understands the desire to limit others access to sources of funding, the competitive grants are federal Library Services and Technology Act funds which states that all types of libraries should be eligible.

An advisory working group made a number of recommendations regarding Division 5: (a) removing the concept of "seed money;" the agency concurs and the rules reflect this change; (b) removing microfilming from the list of allowable activities; the agency concurs and the rules reflect this change; (c) allowing only TexShare members to be the lead organization; because standardization of grant policies and procedures was one of the primary desired outcomes of revising these rules, the agency does not concur; and (d) removing the matching funds requirement from rule; the agency concurs and the rules reflect this change. In addition they recommended removing the special consideration provisions of §2.120; since major resource and regional library systems did not express support for this provision, the agency concurs and has removed this section.

Finally, a commission member recommended deleting the first sentence of §2.512(1) because the concept of "uniqueness" was too high a standard; the agency concurs and has removed this sentence.

A number of typographical errors were also identified and corrected in §§2.118, 2.212, 2.311, 2.411, and 2.511.

DIVISION 1. GENERAL GRANT GUIDELINES

13 TAC §§2.110 - 2.119

The new sections are adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

§2.110. Scope of Subchapter.

The agency operates a variety of grant programs including negotiated, competitive, and formula grants. This subchapter applies to all types of grant programs. However, §§2.112, 2.113, 2.117, 2.118, and 2.119 of this title (relating to Eligible and Ineligible Expenses, Peer Review, Grant Review and Award Process, Decision Making Process, and Multiple Applications) apply only to competitive grant programs. Formula grant guidelines are also specified in §2.810 et al (relating to Loan Star Libraries grants), and §1.41 et al (relating to Library Systems grants).

§2.118. Decision Making Process.

To be considered eligible for funding by the commission, any application must receive a minimum adjusted mean score of more than 50 percent of the maximum points available. To reduce the impact of scores that are exceedingly high or low, or otherwise outside the range of scores from other reviewers, agency staff will tabulate the panel's work using calculations such as an adjusted mean score.

(1) Applications will be ranked in priority order by score for consideration by the commission.

(2) If insufficient funds remain to fully fund the next application, the staff will negotiate a reduced grant with the next ranked applicant.

(3) If the panel recommends funding an application that, for legal, fiscal, or other reasons, is unacceptable to the staff, a con-

trary recommendation will be made. The applicant will be informed of this situation prior to presentation to the commission and may negotiate a revision to the application. A positive recommendation to the commission will be contingent upon successfully completing these negotiations prior to the commission meeting.

(4) If the panel is unable to produce a set of recommendations for funding, the agency staff will use the same evaluation procedures to develop recommendations to the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2007.

TRD-200700458
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: March 5, 2007
Proposal publication date: November 10, 2006
For further information, please call: (512) 463-5459



DIVISION 2. NEGOTIATED GRANTS

13 TAC §§2.210 - 2.212

The new sections are adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

§2.212. *Technical Assistance Grants.*

(a) **Goals and Purposes.** This grant program provides funds for technical assistance to public or other libraries to help enable library staff use and maintain information resource technology.

(b) **Eligible Applicants** include major resource library systems and regional library systems; if a major resource library system or regional library system is not awarded a grant, the commission may contract with another library, non-profit corporation, or business to provide service.

(c) **Criteria for Grant.** The commission may award negotiated grants to provide technical assistance services. An award may be made and/or renewed each year if:

(1) the applicant demonstrates capability of delivering the specified technical assistance in a timely fashion at a reasonable cost;

(2) the commission finds a continuing regional and statewide need for the services (relative to other services); and

(3) the commission finds that the best value to the state will be achieved without competition.

(d) **Eligible Expenses.**

(1) This grant will fund costs for personnel, equipment/property, telecommunications, supplies, travel and professional services necessary to provide the specified technical assistance.

(2) This grant will not fund building construction or renovation; major capital expenses; food, beverages, or gifts; equipment/property or technology not specifically needed to carry out the goals of the grant; or travel for non-grant funded personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Edward Seidenberg
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For further information, please call: (512) 463-5459



DIVISION 3. LIBRARY SERVICES AND TECHNOLOGY ACT, LIBRARY COOPERATION GRANTS

13 TAC §§2.310 - 2.312

The new sections are adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

§2.311. *Eligible Applicants.*

(a) Through their governing authority, major resource library systems, regional library systems, and libraries that are members of the TexShare Library Consortium are eligible to apply for funds. These funds are awarded to major resource or regional library systems or TexShare member libraries but may be used with all types of libraries as specified in the grant guidelines and application. Applicants must be members of the TexShare Library Consortium or the Texas Library System at the time of application and for the period of grant funding. Non-profit organizations may be awarded funds for projects that involve a number of TexShare member libraries, as well as other types of libraries or organizations. Public school libraries may participate as partners in grants lead by eligible entities.

(b) Successful applicants are eligible to apply for grant funds for the two years following the initial grant year. The second and third application will be evaluated with the same criteria as new applications. No applicant will be eligible for a fourth year of funding for the same project.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5459



DIVISION 4. LIBRARY SERVICES AND TECHNOLOGY ACT, SPECIAL PROJECTS GRANTS

13 TAC §§2.410 - 2.412

The new sections are adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

§2.411. *Eligible Applicants.*

(a) Through their governing authority, major resource library systems, regional library systems, and libraries that are members of the TexShare Library Consortium are eligible to apply for funds. These funds are awarded to major resource or regional library systems or TexShare member libraries but may be used with all types of libraries as specified in the grant guidelines and application. Applicants must be members of the TexShare Library Consortium or the Texas Library System at the time of application and for the period of grant funding. Non-profit organizations may be awarded funds for projects that involve a number of TexShare member libraries, as well as other types of libraries or organizations. Public school libraries may participate as partners in grants lead by eligible entities.

(b) Successful applicants are eligible to apply for grant funds for the two years following the initial grant year. The second and third application will be evaluated with the same criteria as new applications. No applicant will be eligible for a fourth year of funding for the same project.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700461

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



DIVISION 5. LIBRARY SERVICES AND TECHNOLOGY ACT, TEXTREASURES GRANTS

13 TAC §§2.510 - 2.512

The new sections are adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

§2.511. *Eligible Applicants.*

(a) Through their governing authority, libraries that are members of the TexShare Library Consortium, or non-profit organizations that are applying on behalf of TexShare members, are eligible to apply

for funds. These funds are awarded to eligible applicants, but may be used with all types of libraries or with non-profit organizations that participate as partners in the grant project, as specified in the grant guidelines and application.

(b) Successful applicants are eligible to apply for grant funds for the two years following the initial grant year. The second and third application will be evaluated with the same criteria as new applications. No applicant will be eligible for a fourth year of funding for the same project.

§2.512. *Criteria for Award.*

Proposals will be scored by peer reviewers on five criteria. The maximum points for each criterion is shown.

(1) Significance of the collection (30 points). Will the materials be useful to users throughout the state? Does this project focus on materials about Texas? Will the project provide an "advancement of knowledge," rather than cleaning up general backlogs?

(2) Availability (30 points). How will access to the collection be provided? Will bibliographic records be available through OCLC or the Internet? Will materials themselves be available through an Internet connection, through interlibrary loan, through reciprocal borrowing, or only on-site use? Will common interoperability standards be used?

(3) Project Design (20 points). Is the project well defined? Will access to the collection be sustainable beyond the grant period? Does the project design reference commonly accepted standards and practices?

(4) Cost Effectiveness (15 points). How appropriate are the chosen hardware, software, staffing, and service providers for the project, given the cost of the project? Is the budget realistic? Does the project proposal make effective use of the grant funds?

(5) Evaluation (5 points). How well has the applicant designed and described the methodology to evaluate the project and estimate the level of usage? Is the evaluation methodology appropriate and effective?

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700462

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



DIVISION 6. LIBRARY SERVICES AND TECHNOLOGY ACT, GUIDELINES FOR LIBRARY SYSTEMS

13 TAC §§2.610 - 2.612

The new sections are adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the commission to adopt rules relating to providing grants to

meet specific information needs of residents of the state and specific needs of local libraries.

§2.611. Eligible Applicants.

Major resource library systems and regional library systems may apply for these grants. Successful applicants are eligible to apply for grant funds for the year following the initial grant year. This second application will be evaluated with the same criteria as new applications. Renewal of a grant is not automatic.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700463
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: March 5, 2007
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For further information, please call: (512) 463-5459



DIVISION 7. TEXAS READS GRANTS, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.710 - 2.712

The new sections are adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700464
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5459



DIVISION 8. LOAN STAR LIBRARIES GRANT PROGRAM, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.810 - 2.815

The new sections are adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5459



SUBCHAPTER C. GRANT POLICIES

The Texas State Library and Archives Commission adopts the repeal of 13 TAC Chapter 2, Subchapter C, §§2.111 - 2.119, 2.120 - 2.125, 2.130 - 2.135, 2.140 - 2.146, 2.150 - 2.155, 2.160 - 2.165, and 2.170 - 2.175, relating to grant policies and procedures for the management of grants distributed or administered by the agency. The repeal is adopted without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9172) and will not be republished.

The repeal is adopted in coordination with an effort by the agency to adopt new, extensively revised rules for the administration of its grants.

No comments were received regarding the proposed repeal of the rules.

DIVISION 1. GENERAL GRANT GUIDELINES

13 TAC §§2.111 - 2.119

The repeal is adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5459



DIVISION 2. LIBRARY SERVICES AND TECHNOLOGY ACT, LIBRARY COOPERATION GRANTS--PART A, TECHNOLOGY, GUIDELINES FOR TEXSHARE LIBRARIES

13 TAC §§2.120 - 2.125

The repeal is adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700467

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



DIVISION 3. LIBRARY SERVICES AND TECHNOLOGY ACT, LIBRARY COOPERATION GRANTS--PART B, SERVICES, GUIDELINES FOR TEXSHARE LIBRARIES

13 TAC §§2.130 - 2.135

The repeal is adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700468

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



DIVISION 4. LIBRARY ESTABLISHMENT GRANTS, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.140 - 2.146

The repeal is adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the State Library and Archives Commission to adopt rules relating to

providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



DIVISION 5. LIBRARY SERVICES AND TECHNOLOGY ACT, SPECIAL PROJECTS GRANTS, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.150 - 2.155

The repeal is adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



DIVISION 6. LOAN STAR LIBRARIES GRANTS, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.160 - 2.165

The repeal is adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700471

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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Proposal publication date: November 10, 2006

For further information, please call: (512) 463-5459



DIVISION 7. TEXAS READS GRANT PROGRAM, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.170 - 2.175

The repeal is adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700472

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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Proposal publication date: November 10, 2006

For further information, please call: (512) 463-5459



CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

13 TAC §8.6

The Texas State Library and Archives Commission adopts the repeal of 13 TAC §8.6, relating to grant policies and procedures for the management of grants distributed or administered by the agency. The repeal is adopted without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9174) and will not be republished.

The repeal is adopted in coordination with an effort by the agency to adopt new, extensively revised rules for the administration of its grants.

No comments were received regarding the proposed repeal of the rules.

The repeal is adopted under Government Code, §441.0091, Grant Program for Local Libraries, which permits the State Library and Archives Commission to adopt rules relating to providing grants to meet specific information needs of residents of the state and specific needs of local libraries.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700473

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER J. CERTIFICATION REQUIREMENTS FOR EDUCATORS OTHER THAN CLASSROOM TEACHERS AND EDUCATIONAL AIDES

19 TAC §230.305

The State Board for Educator Certification (SBEC) adopts an amendment to §230.305, relating to certification requirements for educators other than classroom teachers and educational aides. The amendment is adopted without changes to the proposed text as published in the November 24, 2006, issue of the *Texas Register* (31 TexReg 9566) and will not be republished. The section addresses the issuance of temporary certificates. The adopted amendment establishes a deadline of March 31, 2007, for issuing the temporary certificate for assistant principal, principal, and superintendent positions.

19 TAC §230.305, Temporary Certificate, provides for a five-year temporary certificate for school administrators in the positions of assistant principal, principal, and superintendent, while completing the certification requirements. Section 232.4, Probationary Certificates, adopted effective October 2003, provides for a probationary certificate for a person enrolled in an educator preparation program. The holder of a probationary principal or superintendent certificate would be enrolled in an educator preparation program and employed by an accredited Texas public or private school in a position appropriate for the certificate sought. The probationary certification process, which also includes mentoring support and internship, replaces the temporary certification process. The majority of administrators in Texas currently use the probationary and standard certificates. Although there is no specific probationary certificate for an assistant principal, the holder of a probationary principal certificate may be assigned as an assistant principal.

In May 2004, the SBEC approved an amendment to establish a deadline of May 31, 2005, to apply for the temporary certificate; however, the rule amendment was not subsequently filed

as adopted as required and, therefore, automatically withdrawn by the *Texas Register*. In July 2005, the SBEC restarted the process for amending 19 TAC §230.305 by approving an amendment to establish a deadline of December 31, 2005, to apply for a temporary certificate; however, the rule was not subsequently filed with the *Texas Register* as required. Both efforts to amend 19 TAC §230.305 were reviewed by the State Board of Education and no action was taken.

The adopted amendment to 19 TAC §230.305 establishes a March 31, 2007, deadline in new subsection (d) for issuing a temporary certificate for the administrator positions of assistant principal, principal, and superintendent. Requirements for the temporary five-year administrator certificates are not aligned with current principal and superintendent standards and do not require supervision or mentoring of the beginning administrator. The adopted amendment also includes language to allow a temporary certificate issued on or before March 31, 2007, under §230.305 to remain effective until the certificate's stated expiration date.

Additional non-substantive, technical edits are also made to this section for consistency.

The following is a summary of the public comment received on the proposed amendment to 19 TAC §230.305 and the corresponding agency response.

Comment. An administrator of the Hudson Independent School District asked for clarification on whether temporary certificates issued prior to the 2007 date would be in effect until the stated expiration date.

Agency response. The agency offers the following clarification. The proposed rule text states that any certificate issued on or before March 31, 2007, will remain effective until its stated expiration date. No changes were made to the proposal in response to the comment.

The amendment is adopted under the Texas Education Code, §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued.

The amendment implements Texas Education Code, §21.041(b)(2).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 16, 2007.

TRD-200700552

Raymond Glynn

Acting Associate Commissioner, Educator Quality and Standards

State Board for Educator Certification

Effective date: March 8, 2007

Proposal publication date: November 24, 2006

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER A. ORGANIZATION OF THE BOARD

22 TAC §131.15

The Texas Board of Professional Engineers adopts an amendment to §131.15, relating to Committees, without changes to the proposed text as published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10239) and will not be republished.

The adopted amendment changes the meeting frequency of the Legislative Committee of the Board from twice per year to an as-needed basis.

No comments were received regarding the Board's adoption of the amendment.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 16, 2007.

TRD-200700545

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: March 8, 2007

Proposal publication date: December 22, 2006

For further information, please call: (512) 440-7723



PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 341. LICENSE RENEWAL

22 TAC §341.3

The Texas Board of Physical Therapy Examiners adopts amendments to §341.3, concerning Qualifying Continuing Education Requirements, without changes to the proposed text as published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10513). The amendment adds a continuing education category for residencies, fellowships and examinations.

No comments were received regarding these sections.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2007.

TRD-200700453

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: March 5, 2007

Proposal publication date: December 29, 2006

For further information, please call: (512) 305-6900



CHAPTER 346. PRACTICE SETTINGS FOR PHYSICAL THERAPY

22 TAC §346.1

The Texas Board of Physical Therapy Examiners adopts an amendment to §346.1, concerning Educational Settings, without changes to the proposed text as published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10514). The amendment increases access to physical therapy for children being served under the Individuals with Disabilities Education Act (IDEA), 20 USC §1414, by changing the physical therapy requirements for evaluations and reevaluations in this setting. Specifically, those activities would be performed in accordance with federal mandates under Part B of the Individuals with Disabilities Education Act (IDEA).

No comments were received regarding these sections.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2007.

TRD-200700441

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: March 5, 2007

Proposal publication date: December 29, 2006

For further information, please call: (512) 305-6900



22 TAC §346.3

The Texas Board of Physical Therapy Examiners adopts an amendment to §346.3, concerning Early Childhood (ECI) Setting, without changes to the proposed text as published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10514). The amendment increases access to physical therapy for children being served under the Individuals with Disabilities

Education Act (IDEA), 20 USC §1414, by changing the physical therapy requirements for evaluations and reevaluations in this setting. Specifically, those activities would be performed in accordance with federal mandates under Part C of the Individuals with Disabilities Education Act (IDEA).

No comments were received regarding these sections.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2007.

TRD-200700442

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: March 5, 2007

Proposal publication date: December 29, 2006

For further information, please call: (512) 305-6900



PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 665. EXAMINATION ADVISORY COMMITTEE

22 TAC §665.2

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §665.2, concerning the Size, Quorum and Qualifications of advisory committee members. The amendment is adopted without changes to the proposed text as published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8959) and will not be republished.

The amendment to the Size, Quorum and Qualifications will clarify the qualifications of being a member of the committee and why you can be removed from the committee.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700527

Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: March 7, 2007
Proposal publication date: November 3, 2006
For further information, please call: (512) 239-5263



22 TAC §665.4

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §665.4, concerning the terms of office. The amendment is adopted without changes to the proposed text as published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8960) and will not be republished.

The amendment to the terms of office will delete the board appointing the chair and vice chair of each committee, announcing each meeting under the Open Meetings Act, procedures for parliamentary decisions, and minutes being taken, approved and signed by the committee officer.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700526
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: March 7, 2007
Proposal publication date: November 3, 2006
For further information, please call: (512) 239-5263



22 TAC §665.7

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §665.7, concerning training. The amendment is adopted without changes to the proposed text as published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8961) and will not be republished.

The amendment will change the required training needed to be a member of the examination advisory committee.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Section 1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700528
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: March 7, 2007
Proposal publication date: November 3, 2006
For further information, please call: (512) 239-5263



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts amendments to §229.182 concerning licensure of food manufacturers, food wholesalers, and warehouse operators, and §§229.435, 229.439, 229.441, 229.443, and 229.444, concerning licensing of device distributors and manufacturers without changes to the proposed text as published in the August 18, 2006, issue of the *Texas Register* (31 TexReg 6458), and the sections will not be republished.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in these amendments.

Programs with regulatory authority over food manufacturers, food wholesalers, and warehouse operators; and device distributors and manufacturers, were evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; the licensee's ability to pay in comparison to average salary of professionals; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

Finally, the sections required updating to be consistent with changes resulting from House Bill 2292, 78th Legislative Session, 2003. The amendments update and clarify the sections to reflect current licensing procedures and license term durations as well as identification of the state agencies responsible for certain licensing, enforcement and advisory committee functions.

SECTION-BY-SECTION SUMMARY

Amendments to §229.182 contain increases in licensing fees for food wholesalers with combination products for initial and renewal applications per location, based upon gross annual sales. Specifically, new §229.182(b)(3)(A) increases the license fee for wholesalers of combination products with gross annual

sales of \$0.00 - \$199,999.99 by \$120 for a two-year term; new §229.182(b)(3)(B) increases the license fee for wholesalers of combination products with gross annual sales of \$200,000 - \$499,999.99 by \$180 for a two-year term; new §229.182(b)(3)(C) increases the license fee for wholesalers of combination products with gross annual sales of \$500,000 - \$999,999.99 by \$240 for a two-year term; new §229.182(b)(3)(D) increases the license fee for wholesalers of combination products with gross annual sales of \$1 million - \$9,999,999.99 by \$300 for a two-year term; and new §229.182(b)(3)(E) increases the license fee for wholesalers of combination products with gross annual sales of greater than or equal to \$10 million by \$450 for a two-year term.

Amendments to §229.435 remove the reference to one-year license fees changing the reference to two years, and correctly identify the responsible licensing agency as the Department of State Health Services.

Amendments to §229.439 contain increases in fees for device distributor licenses and renewal licenses for distributors with combination products. Amendments to §229.439(a)(1)(A)-(C) remove references to two-year fees related to minor changes within the licensure period. Specifically, §229.439(a)(2)(A) increases the license fee for distributors with gross annual sales of \$0 - \$199,999.99 by \$120 for a two-year term; §229.439(a)(2)(B) increases the license fee for distributors with gross annual sales of \$200,000 - \$499,999.99 by \$180 for a two-year term; §229.439(a)(2)(C) increases the license fee for distributors with gross annual sales of \$500,000 - \$999,999.99 by \$240 for a two-year term; §229.439(a)(2)(D) increases the license fee for distributors of combination productions with gross annual sales of \$1 million - \$9,999,999.99 by \$300 for a two-year term; §229.439(a)(2)(E) increases the license fee for distributors of combination products with gross annual sales of greater than or equal to \$10 million by \$450 for a two-year term. Amendments to §229.439(a)(3) add a statement about late fees and remove references to two-year fees related to minor changes within the licensure period.

Amendments to §229.441 correctly reflect that the device-related policies of the U.S. Food and Drug Administration are also the policies of the Department of State Health Services. In addition, the amendments recognize that the Executive Commissioner of the Health and Human Services Commission is responsible for any modification or rejection of rules relating to device labeling exemptions adopted under the Federal Food, Drug and Cosmetic Act. References to the "Board of Health" were removed and replaced with "Executive Commissioner of the Health and Human Services Commission" due to the abolishment of the board.

Amendments to §229.443 and §229.444 correctly reflect that the agency responsible for certain enforcement actions with respect to adulterated and misbranded devices is the Department of State Health Services and that the Executive Commissioner of the Health and Human Services Commission is responsible for oversight of the functions and duties of the Device Distributors and Manufacturers Advisory Committee. Changes were made due to agency name changes and the abolishment of the Board of Health.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER L. LICENSURE OF FOOD MANUFACTURERS, FOOD WHOLESALERS, AND WAREHOUSE OPERATORS

25 TAC §229.182

STATUTORY AUTHORITY

The amendment is adopted under the Health and Safety Code, §§431.204, 431.222, and 431.276, which require the department to charge fees for issuing or renewing a license or permit; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700515

Cathy Campbell

General Counsel

Department of State Health Services

Effective date: March 7, 2007

Proposal publication date: August 18, 2006

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER X. LICENSING OF DEVICE DISTRIBUTORS AND MANUFACTURERS

25 TAC §§229.435, 229.439, 229.441, 229.443, 229.444

STATUTORY AUTHORITY

The amendments are adopted under the Health and Safety Code, §§431.204, 431.222, and 431.276, which require the department to charge fees for issuing or renewing a license or permit; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy Campbell
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 23. ADMINISTRATIVE PROCEDURES

34 TAC §§23.4, 23.5, 23.7, 23.8

As part of the rule review of 34 TAC Chapter 23 (Administrative Procedures) conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or system) adopts amendments to 34 TAC §§23.4, 23.5, 23.7, and 23.8 without changes to the proposed texts as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9210). The related Notice of Readoption (Adopted Review) of Chapter 23 is published elsewhere in this issue of the *Texas Register*.

Section 23.4 concerns public participation in the adoption of rules. State law generally provides for the opportunity to initiate rulemaking, and the rule describes in more detail how the public may initiate the rulemaking process at TRS. One change is adopted to the rule in subsection (d) of this section to increase flexibility in the amount of time allowed for public comment when a petition for rulemaking is received.

Section 23.5 concerns nominations for appointment to the Board. The nomination process is set out in state law in general terms, and the rule describes the nomination process in greater detail as needed for administration. The adopted changes would clarify terms used in the rule to refer to retirees participating in the nominating process as well as clarifying terms used in referring to positions on the TRS Board of Trustees. The changes also update the dates of the terms for the Board positions.

Section 23.7 concerns the Code of Ethics for Consultants, Agents, Financial Providers and Brokers. State law requires TRS to enforce an ethics policy and to adopt by rule standards of conduct for consultants and advisors. The rule requires compliance with the Code of Ethics and adopts that code by reference. The adopted amendment would update the date of the document adopted by reference and add a notice that this document may be found on the TRS Web site.

Section 23.8 concerns expenditure reporting by consultants, agents, financial providers and brokers. State law requires TRS to require by rule the filing of an expenditure report. The rule requires the filing of reports showing expenditures made on behalf of TRS trustees or employees. The adopted amendment would add a notice that documents related to reporting such expenditures may be found on the TRS Web site.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under the following authorities: §825.102, Government Code, which autho-

rizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Cross-reference to statute: The adopted amendments affect the following statutes in the Government Code: §825.002, which provides for the nomination of persons for appointment to the TRS board; §825.115, which makes TRS subject to the administrative procedure law, Chapter 2001 of the Government Code; §825.212, which provides for the adoption and enforcement of an ethics policy for employees, consultants, and advisors of the retirement system and requires the filing of reports showing expenditures made on behalf of TRS trustees or employees; §2001.021, providing for an interested person to petition TRS for the adoption of a rule; and §2001.029, providing all interested persons a reasonable opportunity to comment on a adopted rule before TRS adopts it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700554
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
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Proposal publication date: November 10, 2006
For further information, please call: (512) 542-6438

CHAPTER 25. MEMBERSHIP CREDIT

SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP

34 TAC §25.1

As part of the rule review of 34 TAC Chapter 25 (Membership Credit) conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or system) adopts amendments to §25.1 without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9212). The related Notice of Readoption (Adopted Review) of Chapter 25 is published elsewhere in this issue of the *Texas Register*.

Section 25.1 concerns full-time service. The rule describes what service is considered full-time service eligible for membership. State law requires membership for all employees of the public school system and defines the word "employee" for purposes of TRS membership eligibility. The amended rule addresses service performed in positions where an employer has established less than 40 hours as a full time equivalent, temporary employment, and rate of compensation. The adopted amendments clarify and more specifically describe the requirements for a position to be considered full-time service. The adopted amendments also describe in greater detail the requirements of regular employment, which is service eligible for membership, and distinguish it from temporary employment, which is not eligible. Further, the adopted section clarifies and more specifically describes the eligibility requirement that a rate of compensation

must be comparable to the rate of compensation for other persons employed in similar positions. The adopted rule has also been re-organized into more than one subsection to make it easier to use.

No comments were received regarding the adoption of the amendments.

Statutory Authority: The amendments are adopted under §825.102, Government Code, which authorizes the Board to adopt rules for eligibility for membership.

Cross-reference to statute: The adopted amendments affect the following sections of the Government Code: §821.001(6), which defines "employee;" §822.001, which states the membership requirement; §823.002, which addresses service creditable in a year; and §825.403 addressing collection of member contributions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ronnie G. Jung
Executive Director

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438



SUBCHAPTER B. COMPENSATION

34 TAC §25.21

As part of the rule review of 34 TAC Chapter 25 (Membership Credit) being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or system) adopts amendments to §25.21 without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9213). TRS withdrew the proposed amendments to §25.31 (Percentage Limits on Compensation Increases) in Subchapter B of Chapter 25, and notice of the withdrawal was published in the February 16, 2007, issue of the *Texas Register* (32 TexReg 611). The related Notice of Readoption (Adopted Review) of Chapter 25 is published elsewhere in this issue of the *Texas Register*.

Section 25.21 concerns compensation subject to deposit and credit. The rule describes what compensation is considered TRS-eligible. The adopted amendments clarify that, in general, salary and wages include recurring base pay. This change is adopted to emphasize that, if an employer creates a type of compensation that is not part of the employee's recurring base pay, then that compensation could be excluded from TRS-eligible compensation. TRS also adopts language to clarify what is intended with regard to additional compensation for service in a particular location of the employer and to clarify that payment for accrued but not used compensatory time for overtime worked is not eligible compensation. Additionally, TRS adopts the amendments to the rule to reflect those made to Government Code, §822.201(b) by the 79th Legislature, Third Called Session, in

House Bill 1 (2006), §4.11, by providing that "salary and wages" will include compensation paid under three new programs established by House Bill 1. Another adopted amendment excludes bonus and incentive payments unless state law requires such to be included; this change is adopted to make administration of this provision consistent and to exclude from compensation unusual types of payments on which deposits normally are not received over the length of a person's career. Adopted amendments also exclude payments that an employer has chosen to exclude from salary and wages because they are not expected to be recurring or because the employer does not consider them to be base pay. The adopted amendments emphasize that excluding certain payments from TRS-eligible compensation may be needed for the protection of the actuarial soundness of the system and to implement the intent of the TRS benefit structure to pay only a percentage of normal, recurring base salary as replacement pay during retirement. The adopted amendments also address applying federal tax code limits on creditable compensation on a plan year basis.

No comments were received regarding the adoption of the amendments.

Statutory Authority: The amendments are adopted under §825.102, Government Code, which authorizes the Board to adopt rules for eligibility for membership and for the administration of the funds of the retirement system, and under §825.506, Government Code, which authorizes the Board to adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan.

Cross-reference to statute: The adopted amendments affect the following sections of the Government Code: §821.001(4), which defines "annual compensation;" §822.201, which describes compensation subject to report and deduction for member contributions and to credit in benefit computations; and §825.506, which states the intent that the TRS plan be administered as a qualified plan under §401(a) of the Internal Revenue Code of 1986 (26 U.S.C. §401).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700556

Ronnie G. Jung
Executive Director

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438



CHAPTER 25. MEMBERSHIP CREDIT

As part of the rule review of 34 TAC Chapter 25 (Membership Credit) conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or system) adopts amendments to §§25.33, 25.41 - 25.43, 25.45, 25.46, 25.75, 25.113, 25.121, 25.123, 25.131, 25.184, 25.201, and 25.301 without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9215). TRS

also adopts amendments to §§25.1, 25.21, 25.82, 25.161, and 25.164. The adopted amendments to those sections are published elsewhere in this issue of the *Texas Register*. Also as a result of the rule review, TRS adopts the repeal of §25.44 without changes to the proposal as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9219) and adopts new §25.302 without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9225). TRS has withdrawn the amendments proposed for §25.31 concerning percentage limits on compensation increases as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9213); notice of the withdrawn proposed amendments to §25.31 is published in the February 16, 2007, issue of the *Texas Register* (32 TexReg 661). Further, the related Notice of Readoption (Adopted Review) of Chapter 25 is published elsewhere in this issue of the *Texas Register*.

Subchapter A, Service Eligible for Membership: This subchapter contains six rules addressing service that will make a Texas public education employee eligible for TRS pension plan membership. Changes are adopted for one rule in the subchapter, §25.1, but as noted above, notice of the changes is provided elsewhere in this issue of the *Texas Register*.

Subchapter B, Compensation: This subchapter contains eleven rules addressing the compensation on which member deposits are required for public education employees eligible for membership. Changes are adopted for two rules in the subchapter--§25.21 and §25.33. As noted above, notice of the adopted changes to §25.21 is provided elsewhere in this issue of the *Texas Register*. Also as noted above, TRS has withdrawn the proposed amendments for §25.31 concerning percentage limits on compensation increases.

Section 25.33 concerns contribution limitation based on compensation. Because federal tax law limits the voluntary contributions a member may make to a qualified retirement plan on an annual basis, this rule describes that the limitation will be based on compensation for a member. The amended section clarifies that the limit is applied on a plan year basis (September 1 through August 31), even if a member has a non-standard school year for reporting and service credit purposes.

Subchapter C, Unreported Service or Compensation: This subchapter contains six rules addressing service or compensation that should have been reported to TRS by a Texas public education employer but was not reported. TRS adopts amendments to five of the rules in the subchapter--§§25.41 - 25.43, 25.45, and 25.46. In addition, TRS repeals §25.44.

Section 25.41 concerns required deposits for unreported service or compensation. TRS amends the section by changing the name of the section to distinguish it from §25.25, which concerns the required deposit of 6.4% of TRS-eligible compensation; clarifying that the rule applies to unreported compensation as well as to unreported service; and emphasizing that the fee specified in §25.43 is applicable.

Section 25.42 concerns payment of benefits contingent on deposit. This rule provides that benefits will not be paid unless all deposits that are due are paid. TRS adopts amendments to clarify that all deposits, whether for unreported service or unreported compensation, must be paid.

Section 25.43 concerns deposits for unreported service. This rule addresses the statutory fee on deposits for unreported service or compensation. TRS adopts amendments to clarify the

title of the section and to clarify that it applies to unreported compensation as well as to unreported service.

Section 25.44 concerns service eligibility. TRS repeals this obsolete rule because it applied only to teachers and auxiliary employees and, based on the dates given in the rule, its application to a member of the retirement system is unlikely.

Section 25.45 concerns verification of unreported compensation or service. This rule addresses how unreported service or compensation must be verified. The amended section clarifies applicability of the rule to unreported compensation as well as to unreported service. Adopted minor wording changes more accurately describe the types of documents that TRS may accept as verification. TRS also adopts new language clarifying that unreported compensation or service cannot be verified after payment of a death benefit.

Section 25.46 concerns determination of compensation subject to deposit and credit. This rule explains how deposits on unreported service will be calculated. TRS adopts amendments to clarify that unreported compensation, as well as unreported deposits, are subject to the method of calculation specified.

Subchapter F, Veteran's (USERRA) Service Credit: This subchapter contains six rules addressing the purchase of TRS service credit based on certain military service in accordance with the Uniformed Services Employment and Re-Employment Rights Act of 1994 (USERRA), 38 U.S.C. §4301 et seq. TRS adopts amendments to one rule in the subchapter, §25.75.

Section 25.75 concerns application for eligible active military duty under USERRA. This rule establishes procedures and deadlines for the purchase of USERRA service credit. TRS adopts an amendment that retains the five-year deadline but also provides for any additional time allowed under USERRA or federal regulations enacted to implement USERRA.

Subchapter G, Purchase of Credit for Out-of-State Service: This subchapter contains six rules addressing the purchase of TRS service credit for out-of-state public education service. TRS adopts amendments to one rule in the subchapter, §25.82, but as noted above, notice of the changes to §25.82 is provided elsewhere in this issue of the *Texas Register*.

Subchapter H, Joint Service with Employees Retirement System: TRS adopts amendments to the single rule in this subchapter, §25.113, which implements the service transfer between TRS and the Employees Retirement System of Texas (ERS) as provided for in Chapter 805 of the Government Code.

Section 25.113 concerns the transfer of credit between TRS and ERS. The rule describes specific steps and requirements to transfer service between the two state systems. TRS adopts several amendments to clarify the salary average that will be used in a transfer, in light of the recent statutory change from a three-year average to a five-year average for TRS members who are not grandfathered to use a three-year average. Other wording clarifications also are adopted, including clarification for working after retirement when a member has transferred service credit.

Subchapter I, Verification of Service: This subchapter contains three rules addressing the verification of compensation or service that is required to be reported but that was not reported. Changes are adopted to two rules in this subchapter, §25.121 and §25.123.

Section 25.121 concerns employer verification. This rule provides the general methods of verifying unreported service. TRS adopts amendments to clarify that the rule also applies to unreported compensation and to require that an employer must provide copies of documents supporting the verification of service or compensation upon request by TRS.

Section 25.123 concerns certification. This rule further specifies the procedures for verification of service or compensation. TRS adopts an amendment to expressly state that TRS determines whether the verified service or compensation is eligible for TRS purposes.

Subchapter J, Creditable Time and School Year: This subchapter contains four rules addressing the amount of service required in a school year in order for a member to accrue a year of TRS membership service credit. TRS adopts changes to one rule in the subchapter, §25.131.

Section 25.131 concerns required service. This rule establishes the basic length of service requirement to obtain a year of TRS membership credit. TRS adopts non-substantive amendments reorganizing the section to make it easier to read.

Subchapter L, Other Special Credit Service: This subchapter contains four rules addressing the purchase of TRS service credit. TRS adopts changes to two rules in this subchapter, §25.161 and §25.164, but as noted above, notice of the adopted changes to these rules is provided elsewhere in this issue of the *Texas Register*.

Subchapter N, Installment Payments: This subchapter contains nine rules addressing the use of an installment payment plan for the purchase of service credit, when eligible. TRS adopts changes to one rule in the subchapter, §25.184.

Section 25.184 concerns refund for nonpayment. This rule provides for TRS to terminate an installment payment agreement if a participant is late with payments or does not make payments as agreed upon. A member whose installment agreement is terminated cannot use this method for three years. TRS adopts amendments to expressly state that if an installment agreement for the purchase of equivalent membership service credit under §25.163 is terminated, the member will not be able to purchase this service credit because the statute providing the opportunity to do so, §823.405 of the Government Code, was repealed effective January 1, 2006.

Subchapter O, Rollover Distributions and Transfers to TRS: This subchapter contains one rule addressing the use of rollovers or trustee-to-trustee transfers for the purchase of TRS service credit. TRS adopts changes to the rule in this subchapter, §25.201.

Section 25.201 concerns acceptance of rollovers and transfers for purchase of TRS credit. This rule explains that TRS will accept an eligible rollover distribution from another eligible retirement plan, such as another qualified defined benefit plan, a 401(k) plan, or an IRA. The rule identifies, consistent with the federal tax code, what kinds of payments are not considered eligible rollovers. For example, under the rule prior to amendment, the portion of a distribution that is not includible in gross income (i.e., after tax amounts) was not considered eligible for rollover. However, the recently enacted Pension Protection Act of 2006 amends the federal tax code to permit defined benefit plans to accept rollovers of after-tax money. To permit the rollover of after-tax money to the extent provided for under the new federal law, TRS amends the rule to authorize this option.

Subchapter P, Calculation of Fees: Before amendment, this subchapter contained one rule addressing calculation of fees when the cost to purchase a type of service credit or to reinstate service credit includes a fee. TRS adopts changes to the existing rule in the subchapter, §25.301, and adopts new rule §25.302, which adds provisions relating to the calculation of the actuarial cost to purchase or to reinstate eligible service credit. TRS also amends the title of the subchapter to "Calculation of Fees and Costs" to reflect the adoption of new §25.302.

Section 25.301 concerns calculation of fees. This rule explains how fees are calculated. TRS adopts an amendment to clarify that fees are calculated from the end of the school year to the beginning date of the school year in which payment is received or installment payment commences. The amendments conform to current practice, based on prior administrative interpretation of the rule.

Adopted new §25.302 concerns the calculation of actuarial cost. In amending three other rules that are published elsewhere in this issue of the *Texas Register*--§25.82 relating to the purchase of out-of-state service credit, §25.161 relating to the purchase of work experience service credit, and §25.164 relating to the purchase of membership waiting period service credit--TRS moves the detailed explanation of actuarial cost and the accompanying tables in those three rules to one consolidated new rule for actuarial cost calculations, new §25.302. The adopted new section replaces the language deleted from those other three rules explaining the actuarial cost calculations and the graphics accompanying those explanations. No substantive changes are made by this consolidation of the actuarial-cost provisions in the three amended rules mentioned into new §25.302.

No comments on the proposals were received.

SUBCHAPTER B. COMPENSATION

34 TAC §25.33

Statutory Authority: The amendment is adopted under the following authorities: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board, and §825.506, Government Code, which authorizes the Board to adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan under §401(a) of the Internal Revenue Code of 1986 (26 U.S.C. §401).

Cross-reference to Statute: The adopted amendment affects the following statutes: §823.006, Government Code, providing for limits on contributions, and §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law, including imposing limitations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700559

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438

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SUBCHAPTER C. UNREPORTED SERVICE OR COMPENSATION

34 TAC §§25.41 - 25.43, 25.45, 25.46

Statutory Authority: The amendments are adopted under §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board.

Cross-reference to Statute: The adopted amendments affect the following statutes: §822.001 establishing the membership requirement and providing for member compensation subject to reporting and contributions; §823.002, which provides for service creditable in a year; §825.403, Government Code, which provides for collection of member contributions and for fees on deposits required but not made, including audit of records used to document deductions required but not paid; §825.505, Government Code, which authorizes TRS to audit employer records; and §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700560

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438

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34 TAC §25.44

Statutory Authority: The repeal is adopted under the following authorities: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board, and §823.002, Government Code, which authorizes the Board to determine by rule the amount of service equivalent to a year of service credit.

Cross-reference to Statute: The adopted repeal affects the following statutes: §822.001, which provides for the membership requirement §823.002, Government Code, which provides for service creditable in a year.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6438

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SUBCHAPTER F. VETERAN'S (USERRA) SERVICE CREDIT

34 TAC §25.75

Statutory Authority: The amendment is adopted under the following authorities: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §823.002, Government Code, which authorizes the Board to determine by rule the amount of service equivalent to a year of service credit; and §823.304, Government Code, which authorizes the Board to adopt rules in order to comply with the federal law relating to USERRA service credit.

Cross-reference to Statute: The adopted amendment affects the following statutes: §823.002, which provides for service creditable in a year; §823.304, Government Code, which authorizes the purchase of USERRA service credit; §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law; and 38 U.S.C. §4301 et seq., the Uniformed Services Employment and Reemployment Rights Act of 1994.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ronnie G. Jung

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Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438

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SUBCHAPTER H. JOINT SERVICE WITH EMPLOYEES RETIREMENT SYSTEM

34 TAC §25.113

Statutory Authority: The amendments are adopted under the following authorities: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §805.009, Government Code, which authorizes the Board to adopt rules for the administration of Chapter 805, Government Code, providing for service transfer between TRS and Employees Retirement System of Texas (ERS); and §823.002, Government Code, which authorizes the Board to determine by rule the amount of service equivalent to a year of service credit.

Cross-reference to Statute: The adopted amendments affect the following statutes: Chapter 805, Government Code, which authorizes transfer of service credit between TRS and the Employees Retirement System of Texas (ERS); §821.001, Government Code, providing a definition of "annual compensation"; §823.002, which provides for service creditable in a year; §824.203, which provides for the calculation of a standard service retirement annuity using a five year salary average; §824.601 and §824.602, relating to loss of monthly benefits and exceptions relating to employment after retirement; §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law; and Chapter 830, relating to the Optional Retirement Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. VERIFICATION OF SERVICE OR COMPENSATION

34 TAC §25.121, §25.123

Statutory Authority: The amendments are adopted under the following authorities: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board and §823.002, Government Code, which authorizes the Board to determine by rule the amount of service equivalent to a year of service credit.

Cross-reference to Statute: The adopted amendments affect the following statutes: §821.001, Government Code, providing a definition of "annual compensation"; §822.001 establishing the membership requirement and providing for member compensation subject to reporting and contributions; §823.002, which provides for service creditable in a year; §824.203, which provides for the calculation of a standard service retirement annuity using a five year salary average; §825.403, Government Code, which provides for collection of member contributions and for fees on deposits required but not made, including audit of records used to document deductions required but not paid; §825.505, Government Code, which authorizes TRS to audit employer records; and §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law.

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SUBCHAPTER J. CREDITABLE TIME AND SCHOOL YEAR

34 TAC §25.131

Statutory Authority: The amendment is adopted under the following statutes: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board, §823.002, Government Code, which requires the Board to determine by rule how much service in any year is equivalent to one year of service credit; and §823.201, Government Code, which authorizes the Board to adopt rules for the granting of membership service credit.

Cross-reference to Statute: The adopted amendment affects the following statutes: §822.001 establishing the membership requirement and providing for member compensation subject to reporting and contributions; §823.002, which provides for service creditable in a year; §823.006, Government Code, providing for limits on contributions; §825.403, Government Code, which provides for collection of member contributions and for fees on deposits required but not made, including audit of records used to document deductions required but not paid; §825.505, Government Code, which authorizes TRS to audit employer records; and §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law.

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SUBCHAPTER N. INSTALLMENT PAYMENTS

34 TAC §25.184

Statutory Authority: The amendment is adopted under the following statutes: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board, and §825.410, Government Code, which authorizes the Board to adopt rules to implement the statutory provisions on installment payments.

Cross-reference to Statute: The adopted amendment affects the following statutes: §825.410, Government Code, providing for installment payments; §822.001, Government Code, establishing the membership requirement and providing for member compensation subject to reporting and contributions; §823.002, Government Code, which provides for service creditable in a year; §823.004, Government Code, which provides for computation of and payment for service credit; §823.006, Government Code, providing for limits on contributions; §823.302, Government Code, providing for the payment of fees in connection with the purchase of military service credit; §823.304, Government Code, which authorizes the purchase of USERRA service credit; §823.401, Government Code, providing for the payment of fees in connection with the purchase of out-of-state service credit and requiring the payment of actuarial cost for the establishment of out-of-state service credit; §823.404, Government Code, requiring the payment of actuarial cost for the establishment of service credit for work experience by career or technology teacher; §823.406, Government Code, requiring the payment of actuarial cost for the purchase of membership waiting period service credit; §823.501, Government Code, providing for fees for the reinstatement of credit canceled by membership termination; §825.105, Government Code, authorizing the Board to adopt actuarial tables; §825.506, Government Code, providing for the administration of the retirement plan as a qualified plan under federal tax law; and Acts 2005, 79th Leg. Ch. 1312 (HB 3169), §§2, 3, & 4 and Acts 2005, 79th Leg., ch. 1359 (SB 1691), §§55 and §63, which repeal the credit purchase option available under §823.405, Government Code, effective January 1, 2006, but provide that the repeal does not apply if an installment agreement existed immediately before January 1, 2006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER O. ROLLOVER DISTRIBUTIONS AND TRANSFERS TO TRS

34 TAC §25.201

Statutory Authority: The amendment is adopted under the following statutes: §823.005, Government Code, which authorizes the Board to adopt rules for the acceptance of rollovers; §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; and §825.506, Government Code, which authorizes the Board to adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan under federal tax law.

Cross-reference to Statute: The adopted amendment affects the following statutes: §823.005, Government Code, authorizing TRS to accept rollovers and transfers of funds; §823.006, Government Code, providing for limits on contributions; §823.302, Government Code, providing for the payment of fees in connection with the purchase of military service credit; §823.304, Government Code, which authorizes the purchase of USERRA service credit; §823.401, Government Code, providing for the payment of fees in connection with the purchase of out-of-state service credit and requiring the payment of actuarial cost for the establishment of out-of-state service credit; §823.404, Government Code, requiring the payment of actuarial cost for the establishment of service credit for work experience by career or technology teacher; §823.406, Government Code, requiring the payment of actuarial cost for the purchase of membership waiting period service credit; §823.501, Government Code, providing for fees for the reinstatement of credit canceled by membership termination; §825.506, Government Code, providing for the administration of the retirement plan as a qualified plan under federal tax law; and Acts 2005, 79th Leg. Ch. 1312 (HB 3169), §§2, 3, & 4 and Acts 2005, 79th Leg., ch. 1359 (SB 1691), §§55 and §63, which repeal the credit purchase option available under §823.405, Government Code, effective January 1, 2006, but provide that the repeal does not apply if an installment agreement existed immediately before January 1, 2006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER P. CALCULATION OF FEES AND COSTS

34 TAC §25.301, §25.302

Statutory Authority: The amendment and new section are adopted under the following statutes: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §823.406, Government Code, authorizing the Board to adopt rules for the administration of this statute concerning the purchase of membership waiting period service credit; and §825.410, Government Code, which authorizes the Board to adopt rules to implement the statutory provisions on installment payments.

Cross-reference to Statute: The amendment and new section affect the following authorities: §823.004, Government Code, which provides for computation of and payment for service credit; §823.006, Government Code, providing for limits on contributions; §823.401, Government Code, providing for the payment of fees in connection with the purchase of out-of-state service credit

and requiring the payment of actuarial cost for the establishment of out-of-state service credit; §823.404, Government Code, requiring the payment of actuarial cost for the establishment of service credit for work experience by career or technology teacher; §823.406, Government Code, requiring the payment of actuarial cost for the purchase of membership waiting period service credit; §824.203, Government Code, which provides for the calculation of a standard service retirement annuity using a five year salary average; §825.410, Government Code, providing for installment payments; §825.105, Government Code, authorizing the Board to adopt actuarial tables; §825.506, Government Code, providing for the administration of the retirement plan as a qualified plan under federal tax law; Acts 2005, 79th Leg. Ch. 1312 (HB 3169), §§2, 3, & 4 and Acts 2005, 79th Leg., ch. 1359 (SB 1691), §§55 and §63, which repeal the credit purchase option available under §823.405, Government Code, effective January 1, 2006, but provide that the repeal does not apply if an installment agreement existed immediately before January 1, 2006; and Acts 2005, 79th Leg., ch. 1359 (Senate Bill 1691), §58, which provides for a three year salary average for grandfathered members.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 25. MEMBERSHIP CREDIT

As part of the rule review of 34 TAC Chapter 25 (Membership Credit) conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or system) adopts amendments to §§25.82, 25.161, and 25.164 without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9226). The related Notice of Readoption (Adopted Review) of Chapter 25 is published elsewhere in this issue of the *Texas Register*.

Subchapter G. Purchase of Credit for Out-of-State Service.

Section 25.82 concerns the cost of purchasing out-of-state service. This rule provides the methods of calculating costs for the purchase of out-of-state service. One method is the actuarial cost method, which is described in detail in the rule, with attached actuarial tables showing the cost factors. TRS adopts amendments to delete all provisions generically describing the calculation of actuarial cost, which also appear in the work experience service credit rule, §25.161, and the membership waiting period service credit rule, §25.164, as well as in the tables attached as graphics in these rules. TRS has moved the cost description and tables to a new §25.302, relating to Calculation of Actuarial Cost, in Subchapter P, relating to Calculation of Fees and Costs. That new rule will apply to the purchase of any of

these three types of service credit (i.e., credit for out-of-state, work experience, or membership waiting period service). This change would consolidate tables for each of the types of service credit, since the factors are the same. No substantive change would result from this re-organization. TRS also adopts amendments to clarify the cost method applicable to out-of-state service beginning before January 1, 2006, for the 2005-2006 school year. Finally, TRS adopts amendments to provide that any member deposits made during a year for which out-of-state service credit is sought to be purchased will not be credited to the cost.

Subchapter L. Other Special Service Credit.

Section 25.161 concerns work experience service credit. The rule describes the purchase of up to two years of work experience service credit by eligible members. The service may be purchased for the actuarial cost. TRS adopts amendments similar to those adopted for §25.82, relating to out-of-state service credit cost, to consolidate the description of actuarial cost and the tables into an adopted new rule, §25.302. TRS also adopts amendments to clarify that any member deposits made during a year for which work experience service credit is sought to be purchased will not be credited to the cost.

Section 25.164 concerns credit for service during a school year with a membership waiting period. The rule describes the eligibility for, and cost of, purchasing membership waiting period service credit, if a member was affected by the waiting period in effect during the September 1, 2003, through August 31, 2005, time period. TRS adopts amendments similar to those adopted for §25.82, relating to out-of-state service credit cost, to consolidate the description of actuarial cost and the tables into one adopted new rule, §25.302. TRS also adopts amendments to clarify that any member deposits made during a year for which membership waiting period service credit is sought to be purchased will not be credited to the cost.

No comments on the proposal were received.

SUBCHAPTER G. PURCHASE OF CREDIT FOR OUT-OF-STATE SERVICE

34 TAC §25.82

Statutory Authority: The amendment is adopted under §825.102, Government Code, which authorizes the Board to adopt rules for eligibility for membership and for the administration of the funds of the retirement system.

Cross-reference to statute: The adopted amendment affects the following section of the Government Code: §823.401, which authorizes purchase of out-of-state service credit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. OTHER SPECIAL SERVICE CREDIT

34 TAC §25.161, §25.164

Statutory Authority: The amendments are adopted under §825.102, Government Code, which authorizes the Board to adopt rules for eligibility for membership and for the administration of the funds of the retirement system.

Cross-reference to statute: The adopted amendments affect the following sections of the Government Code: §823.404, which authorizes purchase of service credit for work experience by career or technology teacher; and §823.406, which authorizes purchase of membership waiting period service credit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 27. TERMINATION OF MEMBERSHIP AND REFUNDS

34 TAC §§27.2, 27.3, 27.6, 27.8

As part of the rule review of 34 TAC Chapter 27 relating to termination of membership and refunds conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or system) adopts amendments to 34 TAC §§27.2, 27.3, 27.6, and 27.8 without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9230). The related Notice of Readoption (Adopted Review) of Chapter 27 is published elsewhere in this issue of the *Texas Register*.

Section 27.2 concerns the withdrawal of member contributions by a person in a position not eligible for TRS membership. This rule addresses the eligibility of a member to terminate membership when still employed by a Texas public education employer, though not in a position eligible for membership. Because of plan qualification requirements prohibiting in-service distributions of retirement funds, TRS adopts amendments to clarify that a refund would not be available to such a member. However, a person who is serving as a substitute but who is not employed in any other capacity in Texas public education may terminate TRS membership while serving as a substitute, for such service is performed in the place of another employee and usually is a day to day arrangement, with no guarantee of service continuing into the next day.

Section 27.3 concerns a false affidavit regarding termination of employment and ineligible refunds. This rule addresses ineligible refunds made when a person is still employed or when a person has a contract to be employed. The person is required to re-pay the funds to TRS. TRS adopts an amendment to expressly state that, if the payment is not returned by the end of the plan year in which the withdrawal occurred, a reinstatement fee will be applied, as with other reinstatements.

Section 27.6 concerns the reinstatement of an account. This rule addresses the eligibility requirements to reinstate service credit that was cancelled by a termination of membership. TRS adopts a clarifying provision to address what withdrawn accounts must be reinstated, if multiple accounts were withdrawn. Specifically, any account that represents less than the amount of service required for a year of membership service credit must be reinstated if, when combined with other canceled service or with other eligible membership service or equivalent membership service performed in the same year, such combined service is sufficient to constitute a creditable year of service.

Section 27.8 concerns reinstatement of membership and service credit by ORP participants. This rule addresses when a person who elected to participate in ORP in lieu of TRS would be eligible to reinstate TRS service credit. TRS adopts amendments to streamline wording and delete an obsolete rule subsection reference but make no substantive changes.

No comments on the proposals were received.

Statutory Authority: The amendments are adopted under the following authority: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board, and under §825.506, Government Code, which authorizes the Board to adopt rules for that modify the plan to the extent necessary for the retirement system to be a qualified plan.

Cross-reference to Statute: The adopted amendments affect the following statutes: Chapter 822, Subchapter A, Government Code, which provides for required and optional TRS membership; exceptions to required membership; termination of membership and its effect; withdrawal of contributions; and resumption of terminated membership; Chapter 823, Subchapter F, Government Code, which provides for reinstatement of service credit; §825.506, which states the intent that the TRS plan be administered as a qualified plan under §401(a) of the Internal Revenue Code of 1986 (26 U.S.C. §401); and Chapter 830, Government Code, which establishes the Optional Retirement Program (ORP) as an alternative to participation in TRS for eligible employees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 29. BENEFITS

As part of the rule review of 34 TAC Chapter 29 relating to benefits conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or system) adopts amendments to 34 TAC §§29.15, 29.26, 29.50 - 29.52, 29.55, 29.61, 29.70 and the repeal of §29.53 without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9232). TRS has withdrawn the proposed amendments to §29.34 relating to limitations as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9232). The withdrawal notice for the proposed amendments to §29.34 was published in the December 15, 2006, issue of the *Texas Register* (31 TexReg 10091). The related Notice of Readoption (Adopted Review) of Chapter 29 is published elsewhere in this issue of the *Texas Register*.

Subchapter A, Retirement: This subchapter contains seventeen rules describing processes and benefits for retiring or retired participants and their beneficiaries. Changes are adopted for two rules in the subchapter, §29.15 and §29.26.

Section 29.15 concerns termination of employment. TRS adopts amendments to this rule to expressly state that a contract or work agreement for post-retirement employment that does not qualify for one of the exceptions in §824.602, Government Code, cannot be negotiated until after the required break in service following retirement, or the person's retirement would be revoked. This amendment expressly describes how the statutory provisions are administered.

Section 29.26 concerns discontinuance of disability benefits. TRS adopts amendments to this rule to clarify the meaning of "restored to active service" for the purpose of discontinuing disability retirement benefits. The amendments also expressly describe the effect on service credit and accumulated contributions when a person returns to active service after disability retirement benefits are discontinued.

Subchapter D, Plan Limitations: This subchapter contains five rules addressing federal tax law limitations for governmental defined benefit plans such as the TRS retirement plan. TRS adopts amendments to four of the rules in the subchapter--§§29.50 - 29.52, and 29.55. TRS also adopts the repeal one rule in the subchapter, §29.53.

Section 29.50 concerns definitions. The amendments adopted for this rule bring the language of the rule into conformity with the federal tax code and regulations, including deleting provisions no longer applicable and clarifying how member contributions that are "picked up" by employers are treated for purposes of the applicable tax limitations.

Section 29.51 concerns plan limitations on retirement benefits. This rule provides information about the applicability of the federal law limit on benefits payable for a plan year. TRS adopts amendments to delete provisions no longer applicable to a governmental plan.

Section 29.52 concerns adjustment to annual benefit limit. This rule addresses the considerations that affect the calculation of the federal law limit on benefits payable for a plan year. TRS adopts amendments to delete obsolete language corresponding to the amendments adopted in §25.51.

Section 29.53 concerns limitation for participants in defined contribution plans. This rule incorporates former federal tax code provisions imposing limits on members who participate in both a defined benefit and a defined contribution plan. The limit is no longer applicable; therefore, TRS adopts the repeal of the rule.

Section 29.55 concerns limitation on contributions. This rule addresses the federal tax law limit on contributions made to TRS for the purchase of service credit. TRS adopts an amendment to expressly state that the limits are applied on a plan year basis (September 1 through August 31).

Subchapter E, Deferred Retirement Option Plan: This subchapter contains three rules implementing the deferred retirement option plan ("DROP"). TRS adopts amendments to one of the rules in the subchapter, §29.61.

Section 29.61 concerns distribution of a DROP account. TRS adopts the amended section to clarify the distribution of any remaining DROP amounts after the death of the participant by clarifying which beneficiary would be entitled to the distribution.

Subchapter F, Partial Lump Sum Option: This subchapter contains three rules implementing the partial lump sum option ("PLSO"). TRS adopts amendments to one of the rules in the subchapter, §29.70.

Section 29.70 concerns distribution of a PLSO payment. TRS adopts the amended section to clarify the distribution of any remaining PLSO amounts after the death of the participant by clarifying which beneficiary would be entitled to distribution.

No comments on the proposals were received.

SUBCHAPTER A. RETIREMENT

34 TAC §29.15, §29.26

Statutory Authority: The amendments to §29.15 and §29.26 are adopted under the following authorities: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; and §825.506, Government Code, which authorizes the Board to adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan and which requires the Board to adopt rules to ensure that benefits paid to a retiree, or to a beneficiary of a member or retiree, do not exceed the limits provided by §415 of the Internal Revenue Code of 1986 (26 U.S.C. §415).

Cross-reference to Statute: The adopted amendments to §29.15 affects §824.002, Government Code, which addresses the effective date of retirement, §824.005, Government Code, which addresses revocation of retirement, and §824.602, Government Code, which provides exceptions to provisions relating to the loss of retirement benefits upon the resumption of service. The adopted amendments to §29.26 affects §824.304, Government Code, which provides for disability retirement benefits, §824.305, Government Code, which provides for a medical examination of a disability retiree, and §824.307, Government Code, which provides for the restoration of a disability retiree to membership.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. PLAN LIMITATIONS

34 TAC §§29.50 - 29.52, 29.55

Statutory Authority: The amendments are adopted under the following authorities: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; and §825.506, Government Code, which authorizes the Board to adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan and which require the board to adopt rules to ensure that benefits paid to a retiree, or to a beneficiary of a member or retiree, do not exceed the limits provided by §415 of the Internal Revenue Code of 1986 (26 U.S.C. §415).

Cross-reference to Statute: The adopted amendments to §§29.50 - 29.52, and §29.55 affect the following statutes in the Government Code: §821.001, providing a definition of "annual compensation"; §822.001, establishing the membership requirement; §822.201, providing for member compensation subject to reporting and contributions; Subchapter D, Establishment of Military Service of Chapter 823, providing for the purchase of military service credit; Subchapter E, Establishment of Equivalent Membership Service of Chapter 823, providing for the purchase of service credit for out-of-state service, developmental leave, unused state personal or sick leave, work experience by a career or technology teacher, and membership waiting period service; §823.006, providing for limits on contributions; §824.203, providing for the calculation of the standard service retirement annuity; Subchapter D, Disability Retirement Benefits of Chapter 824, providing for disability retirement benefits; §825.403, providing for the collection of member contributions, including deductions previously required but not paid; §825.409, providing for employer pick-up of member contributions; §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law; and §825.517, providing for an excess benefit arrangement. The adopted amendments also affect 26 United States Code §401(a), providing for qualification of retirement plans under the federal tax code, §415, providing for limitations relating to qualified plans under the federal tax code, including limitations on benefits from a qualified plan, and §415(m), providing for a governmental excess benefit arrangement under the federal tax code.

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34 TAC §29.53

Statutory Authority: The repeal is adopted under the following authorities: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; and §825.506, Government Code, which authorizes the Board to adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan and which require the board to adopt rules to ensure that benefits paid to a retiree, or to a beneficiary of a member or retiree, do not exceed the limits provided by §415 of the Internal Revenue Code of 1986 (26 U.S.C. §415).

Cross-reference to Statute: No other law is affected by this adopted repeal.

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SUBCHAPTER E. DEFERRED RETIREMENT OPTION PLAN

34 TAC §29.61

Statutory Authority: The amendments are adopted under the following authorities: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board.

Cross-reference to Statute: The adopted amendments affect Chapter 824 (Benefits), Subchapter I, Deferred Retirement Option Plan (DROP), Government Code, providing for participation in DROP.

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SUBCHAPTER F. PARTIAL LUMP-SUM PAYMENT

34 TAC §29.70

Statutory Authority: The amendments are adopted under the following authorities: §824.2045, Government Code, which authorizes TRS to adopt rules for the implementation of the partial lump sum option ("PLSO"), and §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board.

Cross-reference to Statute: The adopted amendments affect the following statutes: §824.2045, Government Code, providing for a partial lump sum option ("PLSO").

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ronnie G. Jung
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CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

As part of the rule review of 34 TAC Chapter 31 (Employment After Retirement) conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or system) adopts amendments to §§31.12 - 31.17, 31.19, 31.34, and 31.41 of 34 TAC Chapter 31 without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9239). The related Notice of Readoption (Adopted Review) of Chapter 31 is published elsewhere in this issue of the *Texas Register*.

Subchapter B, Employment After Service Retirement. This subchapter contains nine rules addressing the general rule of forfeiture of annuities resulting from employment after retirement with a TRS covered employer and the exceptions to that general rule. Changes are adopted for seven rules in the subchapter--§§31.12 - 31.17, and 31.19.

Section 31.12 concerns exceptions to the general rule of forfeiture of service retirement annuity for employment after retirement. The rule describes the general rule of forfeiture for retirees who retired after January 1, 2001, and lists the exceptions to the general rule available for these retirees. The amended rule adds a reference to the exception for faculty members of professional nursing programs. See §824.602(a)(8), Government Code.

Section 31.13 concerns the substitute service exception to the general rule of forfeiture of service retirement annuity for employment after retirement. The rule describes the exception for retirees serving as substitutes. TRS adopts additional language clarifying that this exception may be used in the same calendar month as the exception for one-half time employment, but the retiree may not work more than one-half of the total time available for work. Additional language is also adopted that clarifies that this exception may be used in the same school year as the acute shortage area exception and the principal/assistant principal exception, provided that the requirements for those two exceptions are met. Other changes address formatting the rule into subsections for ease in reading and referencing.

Section 31.14 concerns the one-half time employment exception to the general rule of forfeiture of service retirement annuity for employment after retirement. The rule describes the exception for employment that does not exceed one-half time. TRS adopts language clarifying that paid time off is considered employment for the purpose of determining the number of hours available for work in a given calendar month. This language addresses confusion regarding whether only hours actually worked count towards the monthly maximum allowed for one-half time employment or whether paid time off must also be counted. Additional adopted language clarifies that the hours an employer is scheduled to be closed for business are not included in the total number of hours available for work in a given month used to calculate the maximum number of hours available for one-half time employment. For example, if a TRS covered employer is scheduled to be closed for business from December 18-31, 2006, the number of workdays available in the month of December is 11. A retiree working under the one-half time exception for that employer would be limited to working only 5 days in the month of December 2006.

Section 31.15 concerns the six-month exception to the general rule of forfeiture of service retirement annuity for employment after retirement. The rule describes the exception for full-time employment that does not exceed six months. TRS adopts additional language clarifying that working in a full-time position during any month in the school year in which the retiree retires results in the forfeiture of the annuity for that month, without regard to the number of days worked. This language is intended to address primarily the effect of retirees returning to work in full-time positions in August of the same school year in which they retired. (For return to work purposes under TRS's rules, a school year begins on September 1 and ends on August 31.) TRS also adopts additional language that clarifies that paid time off is considered employment for return to work purposes and must be reported as employment in the calendar month in which it is taken. This language addresses attempts to avoid forfeiting the annuity for June by taking paid leave when the retiree's duties require working into June.

Section 31.16 concerns the acute shortage area exception to the general rule of forfeiture of service retirement annuity for employment after retirement. The rule describes the exception for employment on as much as a full-time basis as a classroom teacher

in an acute shortage area. TRS adopts additional language that clarifies that work under this exception may be combined in the same school year with work as a substitute without forfeiting any annuity, provided the requirements for working under this exception are met.

Section 31.17 concerns the principal or assistant principal exception to the general rule of forfeiture of service retirement annuity for employment after retirement. The rule describes the exception for employment on as much as a full-time basis as a principal or assistant principal. TRS adopts additional language that clarifies that work under this exception may be combined in the same school year with work as a substitute without forfeiting any annuity, provided the requirements for working under this exception are met.

Section 31.19 concerns the exception for a faculty member of a professional nursing program to the general rule of forfeiture of service retirement annuity for employment after retirement. The rule describes the new exception available beginning September 1, 2005 for retirees employed as faculty members in undergraduate or graduate professional nursing programs and provides the requirements for utilizing the exception. TRS amends the rule only to add the word "Exception" to the section title.

Subchapter C, Employment After Disability Retirement. This subchapter contains four rules addressing the general rule of forfeiture of annuities due to employment with a TRS covered employer after disability retirement and the exceptions to that general rule for disability retirees. In the subchapter, changes are adopted only for §31.34.

Section 31.34 concerns employment up to three months on a one-time only trial basis. The rule describes the exception to the general rule of forfeiture for disability retirees who would like to become employed on a full time basis for a three-month trial period. The amended rule changes the requirement that the three consecutive months must fall in the same school year so that the trial period may span two school years. TRS also adopts language that allows the disability retiree to notify TRS of the election to utilize the trial period any time prior to the end of the trial period, rather than by the end of the first month of the trial employment period.

Subchapter D, Employer Pension Surcharge. This subchapter contains one rule--§31.41--addressing the return to work pension surcharge paid by employers for certain retirees who return to their employment. TRS adopts a minor change to that rule, as described below.

Section 31.41 concerns the return to work pension surcharge. The rule describes the amount of pension surcharge owed by the TRS covered employer for each month a retiree working in a TRS-covered position is reported to TRS. The rule also provides that the surcharge is not owed on retirees who were reported working for that employer on the Employment of Retired Members Report for the report month of January 2005. TRS adopts additional language to clarify that the surcharge is based on the amount paid in a report month to a retiree whose employment is subject to the surcharge. For example, if a retiree who worked during the 2005-2006 school year returns to work in August 2006 for the 2006-2007 school year, the TRS covered employer must report the retiree as working in August. The amount of surcharge owed for August is based on the salary paid in August, even if the salary paid in August was for work performed during the 2005-2006 school year.

No comments on the proposals were received.

SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

34 TAC §§31.12 - 31.17, 31.19

Statutory Authority: The amendments are adopted under the following sections of the Government Code: §824.601, which authorizes the retirement system to adopt rules necessary for administering Subchapter G (relating to Loss of Benefits on Resumption of Service) of Chapter 824; §824.602, which requires the TRS Board of Trustees to adopt rules governing the employment of a substitute and defining "one-half time basis"; and §825.102, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board.

Cross-reference to Statute: The adopted amendments affect the following statutes in the Government Code: §824.601, which provides for the loss of benefits on resumption of service; §824.602, which provides for exceptions to the general rule of forfeiture of retirement annuity for employment after retirement; and §825.4092, which provides for employer contributions (surcharges) for employed retirees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. EMPLOYMENT AFTER DISABILITY RETIREMENT

34 TAC §31.34

Statutory Authority: The amendments are adopted under the following sections of the Government Code: §824.601, which authorizes the retirement system to adopt rules necessary for administering Subchapter G (relating to Loss of Benefits on Resumption of Service) of Chapter 824, and §825.102, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board.

Cross-reference to Statute: The adopted amendments affect the following statutes in the Government Code: §824.002, which provides for the effective date of retirement; §824.601, which provides for the loss of benefits on resumption of service; and §824.602, which provides for exceptions to the general rule of forfeiture of retirement annuity for employment after retirement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. EMPLOYER PENSION SURCHARGE

34 TAC §31.41

Statutory Authority: The amendment is adopted under §825.102, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: The adopted amendment affects §825.4092, which provides for employer contributions (surcharges) for employed retirees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 33. LEGAL CAPACITY

34 TAC §33.2, §33.5

As part of the rule review of 34 TAC Chapter 33 (Legal Capacity) conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or system) adopts amendments to §33.2 and §33.5 without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9244). The related Notice of Readoption (Adopted Review) of Chapter 33 is published elsewhere in this issue of the *Texas Register*.

Section 33.2 concerns payments for the account of a minor child or incapacitated person. The rule requires payments to be made as authorized by the person with legal authority to act on behalf of the child or incapacitated person. TRS adopts amendments expanding references in the rule title and text to encompass not just payments for the account of, but also transactions of any kind (for example, change of address or change of bank) for a minor child or incapacitated person.

Section 33.5 concerns approval of designated beneficiary. The rule requires that beneficiary designation for an incapacitated person must be approved by court or otherwise as provided by law. TRS adopts amendments also to permit a designation to be made "as authorized" by a court because at times a court might have previously entered an order giving authority instead of specifically approving the designation.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under the following authorities: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Cross-reference to statute: The adopted amendments affect the following statutes of the Government Code: §824.404, which provides for survivor benefits and selection for plan of payment, including selection made by a guardian on behalf of a minor child; and §825.508, which provides that person entitled to an annuity payment or other benefits administered by TRS may designate an authorized representative by power of attorney.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 35. PAYMENTS BY TRS

34 TAC §35.1

As part of the rule review of 34 TAC Chapter 35 (Payments by TRS) conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or system) adopts amendments to §35.1 without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9245). The related Notice of Readoption (Adopted Review) of Chapter 35 is published elsewhere in this issue of the *Texas Register*.

Section 35.1 concerns computation errors by TRS in determining a payment amount. The rule authorizes TRS to correct errors in its files and adjust future payments accordingly. TRS adopts amendments to clarify that errors in processing are included within the scope of the rule as errors in the files of the system. The amendments also clarify that, in adjusting a future annuity so that a person will receive the actuarial equivalent of what should have been received had the error not occurred, TRS may make adjustments on less than a lifetime basis. Because lifetime adjustment may not be feasible for small amounts owed to the retirement system, the amendments will allow flexibility in adjusting one or more payments in appropriate circumstances.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under the following authorities: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board; and §824.601(f), Government Code, which authorizes the Board to adopt rules necessary for the administration of Government Code Chapter 824, Subchapter G, Loss of Benefits on Resumption of Service, relating to employment after retirement.

Cross-reference to statute: The adopted amendments affect the following statutes in the Government Code: §802.1024, which provides for the correction of errors in the payment of benefits by a retirement system; §823.002, which establishes requirements for the correction of errors related to the determination of creditable service; §824.006, which provides that a monthly annuity is payable to a retiree or beneficiary through the month in which the person entitled to the annuity dies; §824.601, which provides that a retiree is not entitled to benefit payments for any month in which the retiree is employed in Texas public education, except as provided for by §824.602; and §825.109, which provides for the correction of errors by TRS so that future payments will be adjusted to reflect the actuarial equivalent of the benefits to which the person is entitled. The adopted amendments also affect the following statutes in the Government Code: §403.055, which prohibits payments to debtors or delinquents, and §403.0551, which provides for deductions for repayment of certain debts or tax delinquencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

As part of the rule review of 34 TAC Chapter 41 (Health Care and Insurance Programs) conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or system) adopts amendments to §§41.15 - 41.19, 41.30 - 41.41, 41.50 - 41.52, and 41.91 without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9246). The related Notice of Readoption (Adopted Review) of Chapter 41 is published elsewhere in this issue of the *Texas Register*.

Subchapter B, Long-Term Care, Disability and Life Insurance: This subchapter contains six rules addressing the insurance coverage that can be offered pursuant to Chapter 1576 of the Insur-

ance Code. Changes are adopted for five rules in the subchapter, §§41.15 - 41.19.

Section 41.15 concerns requirements to bid on insurance for school district employees and retirees under Chapters 1576 and 1577 of the Insurance Code. The rule establishes the eligibility requirements for contractors or carriers to bid on the insurance coverage that can be offered under Chapter 1576 (Chapter 1577 of the Insurance Code was repealed effective September 1, 2005). All of the amendments adopted for this rule update statutory references to conform with legislative changes; no substantive changes are adopted for this rule.

Section 41.16 concerns coverage offered under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program. The rule provides that the TRS Board may select or reject any and all coverage options relating to the group long-term care insurance program. The two adopted amendments to this rule update statutory references; no substantive changes are adopted for this rule.

Section 41.17 concerns definitions. The rule contains definitions for terms used in Subchapter B of Chapter 41. All of the amendments adopted for this rule update statutory references; no substantive changes are adopted for this rule.

Section 41.18 concerns eligibility for the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program. The rule describes the individuals that are eligible to participate in the long-term care insurance program. The one adopted amendment to this rule is minor and conforms to similar changes adopted for other rules regarding statutory citation style. No substantive changes are adopted for this rule.

Section 41.19 concerns initial enrollment periods for the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program. This rule establishes the enrollment periods of coverage for long-term care insurance as required by Chapter 1576, Texas Insurance Code. One of the amendments adopted for this rule updates statutory references in conformity with legislative changes. The change from "Central" to "Austin" time is intended to avoid confusion when Texas switches between "Central" time and "Daylight Savings" time during the year. The adopted changes to this rule are not substantive.

Subchapter C, Texas School Employees Group Health (TRS-ActiveCare): This subchapter contains sixteen rules addressing the administration and operation of the TRS-ActiveCare health benefits program. Changes are adopted for all but one of the rules in the subchapter, §§41.30 - 41.41 and §§41.50 - 41.52.

Section 41.30 concerns participation in the health benefits program (TRS-ActiveCare) offered under the Texas School Employees Uniform Group Health Coverage Act by school districts, other educational districts, charter schools, and regional education service centers. The rule describes the manner, form, timing and effect of election by entities eligible to participate in TRS-ActiveCare. State law directs TRS to provide by rule details concerning participation in TRS-ActiveCare by school districts, regional education service centers, educational districts, certain risk pools, and eligible charter schools. The rule clarifies the law by providing details about the election into and participation by those eligible entities. Adopted substantive changes include the following: (i) requiring that a notice of election be received by TRS on or prior to the tenth (10th) business day before the first day of the enrollment period to be established for the entity making the election in order to insure that employees and their dependents are afforded adequate enrollment periods; and (ii)

requiring that a notice of revocation be received by TRS no later than the tenth (10th) business day before the first day of the enrollment period to be established for the entity that made an election. The latter adopted requirement will provide sufficient time for the entity to give notice that its employees and their dependents should not attempt to enroll in TRS-ActiveCare. Adopted non-substantive changes include the following: (i) updating statutory references to conform with legislative changes that re-codified some sections of law; (ii) reorganizing certain parts of the rule for purposes of clarification and readability; (iii) updating the rule to address current election procedures and expired deadlines; and (iv) removing subsection (b)(3) of §41.30 because the law upon which this subsection was based has expired.

Section 41.31 concerns eligible bidders. The rule describes eligible bidders for contracts concerning the various services associated with TRS-ActiveCare, including bids from health maintenance organizations. In addition to updating language in the rule to reflect current terminology, the adopted amendments remove references to "proposals" to provide clarity and consistency. The concept of "bids" includes the concept of "proposals" within the context of the statutory scheme of TRS-ActiveCare.

Section 41.32 concerns bid procedure. The rule addresses a number of issues associated with bid procedures. Pursuant to §1579.054, Insurance Code, a contract to provide coverage in association with TRS-ActiveCare may be awarded only through competitive bidding under rules adopted by TRS. The one adopted change is to eliminate an existing typographical error.

Section 41.33 concerns definitions applicable to the Texas School Employees Uniform Group Health Coverage Program. This rule contains a number of definitions applicable to TRS-ActiveCare. Many of these definitions provide greater details and clarification regarding definitions that are found in §§1579.002 - 1579.004 of the Insurance Code. An adopted new paragraph (1)(D) of §41.33 contains the only substantive changes. The new paragraph clarifies which individuals are not included in the definition of "Dependent" for purposes of TRS-ActiveCare even though, within the common meaning of the word, the individual may be in a dependent relationship with a full-time or part-time employee. For example, adopted new paragraph (1)(D) clarifies that the definition of "Dependent" does not include a parent or grandparent, nor does the term include a brother or sister except in the limited circumstances noted in the adopted language for this rule. Adopted non-substantive changes include the following: (i) updating statutory references to conform with legislative changes that re-codified some sections of law; and (ii) rewording certain parts of the rule for purposes of clarification and readability.

Section 41.34 concerns eligibility for coverage under the Texas School Employees Uniform Group Health Coverage Program. The rule clarifies the law concerning the persons eligible to be enrolled in TRS-ActiveCare. The adopted changes are non-substantive and include the following: (i) updating statutory references to conform with legislative changes that re-codified some sections of law; and (ii) rewording certain parts of the rule for purposes of clarification and readability.

Section 41.35 concerns coverage plans. As required by state law, the rule defines the types of coverage plans and available tiers of coverage offered by TRS-ActiveCare. Adopted non-substantive changes include the following: (i) updating statutory references to conform with legislative changes that re-codified some sections of law; and (ii) reorganizing certain parts of the

rule for purposes of clarification and readability. Adopted substantive changes include: (i) stating that TRS-ActiveCare shall include at least two, not three, coverage plans, which is consistent with §1579.101(b), Insurance Code, relating to plans of group coverage; and (ii) revising subsection (d) of §41.35 in compliance with amendments made to §1579.104, Insurance Code, relating to optional coverages, by specifying the optional coverages to which TRS is limited in offering through TRS-ActiveCare--i.e., only optional permanent life insurance, optional long-term care insurance, and optional disability insurance.

Section 41.36 concerns enrollment periods for the TRS-ActiveCare Program. The rule describes and clarifies the enrollment periods for TRS-ActiveCare. Adopted substantive changes include the following: (i) in subsections (d) - (g) of §41.36, clarifying that a completed enrollment form must be received by a participating entity or the health plan administrator of TRS-ActiveCare during the given enrollment period; (ii) in subsection (d) of the section, providing that the enrollment period associated with a special enrollment event shall be the 31 calendar days immediately after the date of the special enrollment event, which is consistent with the other 31-day enrollment periods noted in this rule (HIPAA requires that this enrollment period last at least 30 days after the special enrollment event); (iii) also in subsection (d) of this section, stating that the enrollment form must be received by a participating entity or the health plan administrator, within the noted 31-calendar-day period, a requirement consistent with other TRS-ActiveCare rules; (iv) in subsection (f) of the rule, stating that the 31-calendar-day period begins, not when notice is received by the employee, but when notice of the contract termination is sent by TRS or its designee to the eligible employee, a date that can be accurately and readily determined by TRS for purposes of administrative efficiency; and (v) in subsections (f) and (g) of §41.36, stating that the enrollment form must be "received" by a participating entity or the health plan administrator, not just "submitted" by the employee, within the noted 31-calendar-day period, receipt of the form being consistent with other TRS-ActiveCare rules and enhancing accurate and ready determination of compliance with the rule. Adopted non-substantive changes include reorganizing certain parts of the rule for purposes of clarification and readability.

Section 41.37 concerns the effective date of coverage. The rule describes the effective dates of coverage in TRS-ActiveCare for eligible full-time and part-time employees and their eligible dependents. The amended rule deletes former subsection (a) of §41.37 because the deadline noted therein has expired and deletes former subsection (c)(3) because the 90 day waiting period for TRS membership no longer exists. The remaining subsections are renumbered accordingly.

Section 41.38 concerns the termination date of coverage. The rule describes when coverage terminates under TRS-ActiveCare. All of the adopted changes are non-substantive and simply clarify this rule. The use of "Austin" time avoids the confusion created by the semiannual switches between "Daylight Savings Time" and regular "Central Time."

Section 41.39 concerns coverage for individuals changing employers. The rule addresses various issues that may arise when an employee who changes employers either was enrolled in TRS-ActiveCare or was eligible to enroll in the program at the time of the change. The additional adopted language in subsection (a)(1) of this section clarifies that when an employee changes his or her employer, the employee may add dependents only if a special enrollment event arises under the federal

Health Insurance Portability and Accountability Act of 1996 (HIPAA). The remaining adopted changes to the section are non-substantive.

Section 41.40 concerns coverage continuation while on leave without pay. The rule addresses the continuation of coverage under TRS-ActiveCare while the individual is on leave without pay. All of the adopted changes are non-substantive in nature and are adopted for the purpose of clarifying this rule. Consistent with similar changes to other rules in the subchapter, the use of "Austin" time avoids the confusion created by the semiannual switches between "Daylight Savings Time" and regular "Central Time."

Section 41.41 concerns premium payments. The rule addresses issues associated with the payment of premiums by participating entities. All of the adopted changes to the section are non-substantive in nature and are consistent with similar changes to other rules in the subchapter.

Section 41.50 concerns adjudication of claims. The rule addresses appeals relating to claims and other benefits that are made to the TRS Appeal Committee, and possibly thereafter to the Executive Director. Numerous non-substantive changes are adopted for purposes of clarification and readability. Adopted substantive changes include the following: (i) in subsection (a) of §41.50, clarifying that all procedures established by the administering firm be exhausted before an appeal is made to TRS; (ii) providing that the members of the Appeal Committee shall be appointed by and serve at the discretion of the Chief Operating Officer if the position of the Deputy Director is vacant; (iii) providing that the Committee shall apply the TRS-ActiveCare plan design and rules in effect on the date the first of the following events occurs--the date the claim was incurred or the date the benefit was denied by the administering firm; (iv) requiring that a request for an appeal conference be submitted and received by TRS, versus only a requirement that the request be submitted, no later than 45 days after the date of the initial written decision by the Committee; (v) clarifying that while waiting for an appeal conference, the initial denial by the Committee shall stand until the conference is held; (vi) requiring that a request for an appeal to the Executive Director be submitted and received by TRS, versus only a requirement that the request be submitted, no later than 45 days after the date of the initial written decision by the Committee or no later than 30 days after the date of the written decision by the Committee made pursuant to an appeal conference.

Section 41.51 concerns appeals relating to eligibility. The rule addresses appeals relating to eligibility that are made to the TRS Appeal Committee, and possibly thereafter to the Executive Director. Numerous non-substantive changes are adopted for purposes of clarification and readability. More substantive in nature, language found in subsection (c) of this section that incorporates by reference the procedures found in §41.50 is being deleted. In its place, new subsections are added that "mirror" existing or adopted subsections (c) - (g) and (h) of §41.50 of this section. The reasons described above for the adopted changes to §41.50 (above) are equally applicable to the similar language adopted in this section. Subsection (f) of this section contains the most substantive adopted changes in this rule. Amended subsection (f) of this section provides that if TRS finds that extraordinary circumstances constituting "good cause," as defined in this subsection, prevented a petitioner from complying fully with a deadline under TRS-ActiveCare plan design or rules, the appeal may be granted. Amended subsection (f) of this section expressly

addresses situations when misinformation concerning an enrollment deadline is provided by TRS, by the TRS-ActiveCare health plan administrator (presently, Blue Cross Blue Shield of Texas), or by a participating entity (e.g., a school district). This adopted amendment to the rule provides that misinformation from any of these three sources may, under certain circumstances, be grounds for a finding of "good cause" to allow an enrollment in TRS-ActiveCare that would otherwise be time-barred.

Section 41.52 concerns expulsion from TRS-ActiveCare Program. The rule addresses various issues associated with the expulsion of a participant in TRS-ActiveCare. All of the adopted changes to §41.52 are non-substantive in nature and are consistent with similar changes in other rules.

Subchapter D, Comparability of Group Health Coverages: This subchapter addresses the efforts of TRS in determining the comparability of a school district's group health coverage to the basic health coverage provided under the Texas Employees Group Benefits Act and contains only one rule, §41.91, which is adopted with amendments.

Section 41.91 concerns certification of insurance coverage. This rule specifically addresses the role of TRS in conducting a comparability study and the factors to be considered in determining comparability to the basic health care coverage offered to state employees. The comparability study only applies to school districts that do not participate in TRS-ActiveCare. Also, this rule addresses the scope of the comparability study and the reporting requirements of the affected school districts. All of the amendments adopted for this rule either update statutory references or make minor, non-substantive changes to the text of the rule.

No comments on the proposal were received.

SUBCHAPTER B. LONG-TERM CARE, DISABILITY AND LIFE INSURANCE

34 TAC §§41.15 - 41.19

Statutory Authority: The amendments are adopted under §1576.006, Insurance Code, which authorizes TRS to adopt rules relating to the group long-term care insurance program as TRS considers necessary.

Cross-reference to statute: The adopted amendments affect the following sections of the Insurance Code: §1576.008, which addresses competitive bidding requirements for contracts to provide long-term care insurance benefits under Chapter 1576, and §1576.001, which contains various definitions related to the long-term care insurance program under Chapter 1576.

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SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS- ACTIVECARE)

34 TAC §§41.30 - 41.41, 41.50 - 41.52

Statutory Authority: The amendments are adopted under the following statutes: §1579.052, Insurance Code, which authorizes TRS to adopt rules relating to the TRS-ActiveCare program as TRS considers necessary, including rules relating to the adjudication of claims and expelling participants from the program for cause; §1579.101, Insurance Code, which requires TRS to establish by rule plans for group coverages under the TRS-ActiveCare program and to define by rule the requirements of each coverage plan and tier of coverage; and §1579.102, Insurance Code, which requires TRS to prescribe by rule the coverage provided under the TRS-ActiveCare catastrophic coverage plan.

Cross-reference to statute: The adopted amendments affect the following sections of the Insurance Code: §1579.052, which grants the trustee the authority to adopt rules as necessary to administer Chapter 1579, including rules relating to the adjudication of claims and expelling participants from TRS-ActiveCare for cause; §1579.151, which describes elections available to school districts with 500 or fewer employees and elections available to various other entities eligible to participate in TRS-ActiveCare; §1579.152, which addresses participation in TRS-ActiveCare by school districts with more than 500 employees; §1579.1525, which addresses participation in TRS-ActiveCare before September 1, 2005, by school districts with more than 500 employees; §1579.153, which addresses participation in TRS-ActiveCare by certain risk pools; §1579.154, which addresses participation in TRS-ActiveCare by eligible charter schools; §1579.054, which requires competitive bidding under rules adopted by the trustee; §1579.055, which provides that the trustee is not required to select the lowest bid and may also consider any relevant criteria; §1579.002, which contains general definitions; §1579.003, which contains the definition of an "employee"; §1579.004, which contains the definition of a "dependent"; §1579.201, which provides that the terms "full-time employee" and "part-time employee" shall have the meanings assigned by rules adopted by the trustee; §1579.202, which describes "eligible employees" for TRS-ActiveCare; §1579.101, which authorizes plans of group coverages; §1579.104, which addresses optional coverages that can be offered under TRS-ActiveCare; §1579.203, which addresses the ability of an eligible employee to select different coverage plans; and §1579.255, which addresses payments to TRS-ActiveCare by participating entities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 16, 2007.

TRD-200700582
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: March 8, 2007
Proposal publication date: November 10, 2006
For further information, please call: (512) 542-6438

SUBCHAPTER D. COMPARABILITY OF GROUP HEALTH COVERAGES

34 TAC §41.91

Statutory Authority: The amendments are adopted under §22.004, Education Code, which requires TRS to adopt rules to determine whether a school district's group health coverage is comparable to the basic health coverage offered under the Texas Employees Group Benefits Act.

Cross-reference to statute: No other laws are affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ronnie G. Jung
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For further information, please call: (512) 542-6438

CHAPTER 43. CONTESTED CASES

34 TAC §§43.1, 43.3, 43.6, 43.8 - 43.10, 43.12, 43.15, 43.16, 43.18, 43.20, 43.23, 43.28, 43.34, 43.37 - 43.39, 43.42, 43.44, 43.45

As part of the rule review of 34 TAC Chapter 43 (Contested Cases) conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or system) adopts amendments to §§43.1, 43.3, 43.6, 43.8 - 43.10, 43.12, 43.15, 43.16, 43.18, 43.20, 43.23, 43.28, 43.34, 43.37 - 43.39, 43.42, and 43.44 without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9259). TRS adopts the amendment to §43.45 with changes to correct a grammatical error in subsection (g). TRS also adopts new §43.48, relating to the cost of preparing an administrative record; however, notice of the proposed new section is published elsewhere in this issue of the *Texas Register*. The related Notice of Readoption (Adopted Review) of Chapter 43 is also published elsewhere in this issue of the *Texas Register*.

TRS adopts amended sections of Chapter 43 to reflect that, as a result of statutory changes made by the 79th Legislature (Regular Session, 2005), TRS is authorized to employ, select, or contract for the services of an administrative law judge or hearing examiner not affiliated with the State Office of Administrative Hearings (SOAH) to conduct a hearing on an appeal relating to the pension plan. The adopted amendments recognize that a referral for a contested case hearing may be either to SOAH or to an administrative law judge not affiliated with SOAH. The following sections are amended to reflect that authority: §43.1, concerning administrative review of individual appeals; §43.3, concerning definitions; §43.6, concerning filing of documents; §43.8,

concerning extension of time for filings pleadings; §43.9, concerning docketing of adjudicative hearings, dismissal, and SOAH authority; §43.10, concerning authority of the TRS executive director to grant relief; §43.12, concerning form of petitions and other pleadings; §43.15, concerning motions; §43.16, concerning notice of hearing and other actions; §43.18, concerning motion for consolidation; §43.20, concerning appearance and representation; §43.23, concerning powers of the administrative law judge; §43.28, concerning pre-filed direct testimony in disability appeal proceedings; §43.34, concerning conduct and decorum at hearing; §43.37, concerning recording of the hearing and certified language interpreter; §43.38, concerning dismissal without hearing; §43.39, concerning summary disposition; §43.42, concerning reopening of hearing; §43.44, concerning discovery; and §43.45, concerning proposals for decision, exceptions, and appeals to the TRS Board of Trustees.

Additionally, TRS adopts amendments to §43.45, concerning proposals for decision, exceptions, and appeals to the TRS Board of Trustees (Board). This rule addresses the timelines for issuing a proposal for decision, filing exceptions and replies to exceptions to a proposal for decision, and filing an appeal with the Board from a decision by the Executive Director. The rule also addresses the authority of the Board to make changes to the proposed findings of fact and conclusions of law. The adopted amendments conform the section to the authority granted in §825.115 of the Government Code giving the Board greater authority to modify, refuse to accept, or delete any proposed finding of fact or conclusion of law. The additional language also authorizes the Board to make alternate findings of fact and conclusions of law and broadens the basis on which the Board may make its decision. The amended section also makes it clear to a petitioner that an appeal to the Board is taken up in open session and may result in the disclosure of confidential information in the member's file. The amended section indicates that the petitioner consents to the disclosure by appealing to the Board.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under the following authorities: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board; and §825.115, Government Code, which authorizes the Board to adopt rules for the implementation of §825.115(b), Government Code, relating to a final decision in a contested case.

Cross-reference to Statute: The adopted amendments affect the following statutes: §825.115, Government Code, which addresses the referral of an appeal relating to the pension plan to a hearing official not affiliated with the State Office of Administrative Hearings to conduct an adjudicative hearing under Board rules and the authority of the Board to make the final decision on a contested case under Chapter 2001, Government Code, or on an adjudicative hearing conducted under Board rules; Chapter 551, Government Code, regarding open meetings; Chapter 2001, Subchapters C - G, regarding contested cases under the Administrative Procedure Act; and Chapter 2003, Government Code, regarding the State Office of Administrative Hearings.

§43.45. Proposals for Decision, Exceptions, and Appeals to the Board of Trustees.

(a) The administrative law judge shall issue a proposal for decision with proposed conclusions of law and findings of fact in accordance with Government Code, Chapter 2001 and other applicable law.

(b) Exceptions to the proposal for decision shall be filed with TRS, directed to the attention of the executive director, within 15 days of the date the proposal for decision was issued. Replies to any exception shall be filed with TRS within 15 days of the date the exception is filed. Exceptions shall state with specificity any error of fact or law alleged to have been made by the administrative law judge, and specific references shall be given to exhibit numbers and pages and to testimony where supporting evidence is found. References to testimony shall include the witness name and transcript page and line, if a transcript was prepared; if no transcript was prepared, testimony shall be identified at least by witness name, as well as any other means that may assist in verifying assertions regarding the testimony.

(c) The executive director shall render a decision in the proceeding, except that in a proceeding relating to eligibility for disability retirement, the board of trustees shall render a decision following issuance of a proposal for decision. The executive director or the board of trustees may accept or modify the proposed conclusions of law or proposed findings of fact or may vacate or modify an order issued by an administrative law judge in the manner set forth in subsection (f) of this section. If changes are made, the decision shall state in writing the specific reason and legal basis for each change. A copy of the decision shall be served on the parties.

(d) Any party adversely affected by a decision of the executive director in a docketed appeal may appeal the decision to the board of trustees, unless by statute or other rule the decision of the executive director is the final decision of TRS. Written notice of appeal must be filed with the executive director no later than 20 days after the decision of the executive director is served. If notice of appeal is timely filed, the decision of the executive director shall serve as a proposal for decision to the board.

(e) If a decision of the executive director is appealed, the parties may file additional exceptions or briefs and replies if the executive director modified the administrative law judge's proposed findings of fact or conclusions of law. Additional exceptions or briefs must be filed and served at the same time as the notice of appeal. Replies shall be filed and served within 15 days of the filing of the notice of appeal and exceptions or briefs. The executive director may modify the filing deadlines.

(f) The final decision in an appeal shall be based upon the existing record in the case. In its sole discretion, the board of trustees or the executive director, as applicable, may take the following actions:

- (1) modify, refuse to accept, or delete any proposed finding of fact or conclusion of law made by the administrative law judge;
- (2) make alternative findings of fact and conclusions of law;
- (3) vacate or modify an order issued by the administrative law judge; and
- (4) make a final decision on a contested case.

(g) In exercising its discretion, the board of trustees or the executive director, as applicable, may consider but is not limited to the following grounds for changing a finding of fact or conclusion of law or for making a final decision in a contested case that is contrary to the recommendation of the administrative law judge:

- (1) the administrative law judge did not properly apply or interpret applicable law, retirement system rules, written policies provided to the administrative law judge, or prior administrative decisions;
- (2) a prior administrative decision on which the administrative law judge relied is incorrect or should be changed;

- (3) a technical error in a finding of fact should be changed;
- (4) a finding or conclusion or other action of the administrative law judge would alter the terms of the plan; or
- (5) the change is pursuant to a fiduciary responsibility.

(h) An administrative decision of TRS staff, a decision by the Medical Board, or a decision by the executive director is the final decision of TRS unless a party exhausts any right to appeal a matter to the board of trustees.

(i) An appeal to the Board of Trustees shall be considered in open meeting to the extent required by law. A party who appeals to the Board of Trustees consents to the public discussion of all relevant facts, including information in the member's file that may otherwise be confidential by law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 16, 2007.

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 Ronnie G. Jung
 Executive Director
 Teacher Retirement System of Texas
 Effective date: March 8, 2007
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 For further information, please call: (512) 542-6438



34 TAC §43.48

As part of the rule review of 34 TAC Chapter 43 (Contested Cases) conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or system) adopts new §43.48 without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9263). The related Notice of Readoption (Adopted Review) of Chapter 43 is published elsewhere in this issue of the *Texas Register*.

Adopted new §43.48 concerns the cost of preparing the administrative record. The adopted new section would place the responsibility for the cost of preparing the administrative appeal record on the appealing party if a decision of the TRS Board of Trustees is appealed to court. The cost may include transcribing the audiotapes typically used to record prehearing conferences as well as hearings on the merit.

No comments on the proposal were received.

Statutory Authority: New §43.48 is adopted under §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board, and §2001.177, Government Code, which authorizes a state agency by rule to require an appealing party to pay the cost of preparation of the record of the agency proceeding that is required to be sent to the reviewing court.

Cross-reference to statute: Adopted new §43.48 affects the following statutes: §825.115, Government Code, which addresses the applicability of Chapter 2001, Government Code (the Administrative Procedure Act) to TRS with regard to con-

tested case proceeding; Chapter 2001, Subchapters C - G, regarding contested case proceedings under the Administrative Procedure Act; §2001.177, Government Code, regarding the cost of preparing the agency record for judicial review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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 Ronnie G. Jung
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 Teacher Retirement System of Texas
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 For further information, please call: (512) 542-6438



CHAPTER 47. QUALIFIED DOMESTIC RELATIONS ORDERS

34 TAC §47.10, §47.17

As part of the rule review of 34 TAC Chapter 47 (Qualified Domestic Relations Orders) being conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or system) adopts amendments to 34 TAC §47.10 and §47.17 without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9264). The related Notice of Readoption (Adopted Review) of Chapter 47 is published elsewhere in this issue of the *Texas Register*.

Chapter 47 addresses the requirements and procedures applicable to orders awarding a portion of TRS benefits to an alternate payee, most commonly as a division of community property in a divorce. Section 47.10 concerns the determination of whether an order is a Qualified Domestic Relations Order (QDRO). The rule describes the legal requirements for a court order to be considered "qualified" so that TRS may make direct payment to the alternate payee identified in the order. TRS adopts two amendments to §47.10. First, to address concerns about the use of Social Security numbers in QDROs, which are commonly accessible to the public through the courts as part of case files or through Web-based information services, TRS amends §47.10 to permit TRS to accept an alternate means of verification of the Social Security number if a court determines that omitting the Social Security numbers in the order is necessary to reduce the risk of identity theft. TRS would still be required to have in the system's records Social Security numbers for both parties to the QDRO to correctly identify recipients and report the income to the Internal Revenue Service. Second, TRS amends §47.10 to permit a QDRO, as well as a divorce decree, to include language relating to revocation of a beneficiary to the extent permitted by law.

Section 47.17 concerns the calculation of an alternate payee's benefits before a member's benefit begins. The rule describes how payments to an alternate payee will be calculated when those payments begin before a member retires, as is authorized by §804.005, Government Code. Because the rule did not ex-

pressly address all of the adjustments that may appropriately be made when a member is participating in the Deferred Retirement Option Plan (DROP), TRS amends §47.17 to fully explain the appropriate adjustments.

No comments on the proposals were received.

Statutory Authority: The amendments are adopted under the following sections of the Government Code: §804.003, which authorizes TRS to adopt rules relating to QDROs; §804.005(g), which authorizes TRS to adopt rules for the administration of §804.005; §824.1012(c), which authorizes TRS to establish by rule procedures and documentation necessary for the administration of that section concerning the revocation of beneficiary designation for certain retirement benefit options, including a revocation approved or ordered in a divorce proceeding; and §825.102, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board. The amendments also are adopted in conjunction with 26 United States Code §414(p) relating to QDROs and qualified plans.

Cross-reference to Statute: The adopted amendments affect the following statutes in the Government Code: §804.003, which sets out the requirements for QDROs; §804.005, which authorizes payment in certain circumstances in lieu of benefits awarded by a QDRO; §824.1012, which, in connection with a divorce proceeding, provides for a court-approved revocation of beneficiary designation for certain retirement benefit options; and §824.1013, which provides for the court-ordered change of beneficiary after retirement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 16, 2007.

TRD-200700586
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: March 8, 2007
Proposal publication date: November 10, 2006
For further information, please call: (512) 542-6438



CHAPTER 51. GENERAL ADMINISTRATION

34 TAC §51.1

As part of the rule review of 34 TAC Chapter 51 relating to general administration conducted pursuant to §2001.039 of the Government Code and the related rules of the Secretary of State, the Teacher Retirement System of Texas (TRS or system) adopts amendments to §51.1 without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9267). The related Notice of Readoption (Adopted Review) of Chapter 51 is published elsewhere in this issue of the *Texas Register*.

Section 51.1 concerns advisory and auxiliary committees. The rule describes the committees that advise or otherwise serve the system and that are deemed necessary to assist the Board of Trustees in performing its duties. The adopted amendments delete references to committees, such as credentialing com-

mittees for medical providers, that are no longer in use due to changes in TRS programs. The amendments also clarify that members of the Retiree Advisory Committee, unlike members of the Medical Board, do not serve as independent contractors but only as members of the committee entitled only to reimbursement for actual and reasonable expenses incurred in performing their functions as such.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under the following sections of the Government Code: §825.102, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board; and §825.114, which requires TRS by rule to determine the amount and manner of any compensation or expense reimbursement to be paid members of an advisory committee performing service for the retirement system on an advisory committee.

Cross-reference to Statute: The adopted amendments affect the following statutes: §825.204, Government Code, which requires the TRS Board to appoint a medical board; §825.114, which authorizes the Board to establish advisory committees as it considers necessary; Chapter 1575, Subchapter H (§§1575.351 - 1575.363), Insurance Code, which addresses advisory committees and provides for the appointment of credentialing committees by TRS as trustee of the retirees health benefits program (TRS-Care) and as part of a coordinated care network, which TRS no longer administers; and Chapter 1575, Subchapter I (§§1575.401 - 1575.408), Insurance Code, which provides for the appointment and expense reimbursement of the Retirees Advisory Committee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700587
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: March 8, 2007
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For further information, please call: (512) 542-6438



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §439.7

The Texas Commission on Fire Protection ("TCFP") adopts an amendment to 37 TAC §439.7, pertaining to Examinations for Certification. This amendment is adopted without changes to the proposed text published in the November 24, 2006, issue of the *Texas Register* (31 TexReg 9575), and will not be republished.

The amendment clarifies the eligibility for an individual testing for certification to apply for an IFSAC seal.

No comments were received on the proposed amendment.

These amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032, which provides the TCFP with the authority to prescribe the means of presenting evidence of the fulfillment of the qualifications for appointment as fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700529

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: March 7, 2007

Proposal publication date: November 24, 2006

For further information, please call: (512) 936-3838



CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.5

The Texas Commission on Fire Protection ("TCFP") adopts an amendment to 37 TAC §441.5, pertaining to Continuing Educa-

tion. This amendment is adopted without changes to the proposed text published in the November 24, 2006, issue of the *Texas Register* (31 TexReg 9576), and will be not republished.

The adopted amendment adds, in subsection (j), that a copy of the record of exemptions from continuing education requirements due to documented illness, injury, or activation to military service reported to the Commission shall be kept with the fire department continuing education records for three years.

The TCFP has determined the amendment to be in compliance with Texas Government Code, §419.022(b).

No comments were received on the proposed amendment.

These amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032, which provides the TCFP with the authority to prescribe the means of presenting evidence of the fulfillment of the qualifications for appointment as fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700530

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: March 7, 2007

Proposal publication date: November 24, 2006

For further information, please call: (512) 936-3838



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning March 2007, will review and consider for readoption, revision, or repeal Chapters 113, Registration of Securities; 114, Federal Covered Securities; 123, Administrative Guidelines for Registration of Open-End Investment Companies; 125, Minimum Disclosures in Church and Nonprofit Institution Bond Issues; 135, Industrial Development Corporations and Authorities; and 137, Administrative Guidelines for Regulation of Offers, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for readopting these chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to David Weaver, General Counsel, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to Mr. Weaver at (512) 305-8310. Comments will be reviewed and discussed in a future Board meeting.

TRD-200700631

Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: February 20, 2007

Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission has completed the review of Texas Administrative Code Title 7, §91.503 relating to a change in the credit union president, and §91.515 relating to financial reporting. Notice of the proposed review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9367).

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting §91.503 and §91.515 continue to exist and proposes to readopt these sections without changes pursuant to the requirements of Government Code, §2001.039.

The readoption is proposed as a result of the Department's general rule review.

The specific section affected by the proposed readopted rules is Texas Finance Code, §122.058.

TRD-200700506
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 15, 2007

The Credit Union Commission has completed the review of Texas Administrative Code Title 7, §91.601 relating to share and deposit accounts, §91.602 relating to the solicitation and acceptance of brokered deposits, and §91.608 relating to confidentiality of member records. Notice of the proposed review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9367).

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting §91.601, §91.602, and §91.608 continue to exist and proposes to readopt these sections without changes pursuant to the requirements of Government Code, §2001.039.

The readoption is proposed as a result of the Department's general rule review.

The specific sections affected by the proposed readopted rules are Texas Finance Code, §125.002 and §125.003.

§91.601. Share and Deposit Accounts.

§91.602. Solicitation and Acceptance of Brokered Deposits.

§91.608. Confidentiality of Member Records.

TRD-200700514

Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 15, 2007

◆ ◆ ◆
Teacher Retirement System of Texas

Title 34, Part 3

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or system) adopts the review of Chapter 21 (Purpose and Scope), in accordance with §2001.039 of the Texas Government Code and the related rules of the Secretary of State. The initial Notice of Intention to Review (Proposed Review of) Chapter 21 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884) and an expanded notice of proposed review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368). In addition, a Rule Review Plan for Chapter 21 was posted on the Secretary of State's Web site in October 2005.

TRS received no comments regarding the readoption of Chapter 21.

TRS has assessed whether the reasons for adopting or readopting the single rule contained in Chapter 21, §21.1 (Statement of Policy), continue to exist. TRS finds that §21.1 reflects current law, policy, and procedure and is needed, and the reasons for initially adopting Chapter 21 and §21.1 it continue to exist. TRS readopts §21.1 without amendment.

Statutory Authority: Chapter 21 is readopted under §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Cross-reference to Statute: The readoption of Chapter 21 affects the following statutes in the Government Code - §2001.058, relating to a hearing conducted by the State Office of Administrative Hearings, and §825.115(b) relating to adoption of findings and conclusions by the TRS Board of Trustees.

This concludes the review of Chapter 21 (Purpose and Scope).

TRD-200700621
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Filed: February 20, 2007

◆ ◆ ◆
The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or system) adopts the review of Chapter 23 (Administrative Procedures) in accordance with §2001.039 of the Texas Government Code and the related rules of the Secretary of State. The initial Notice of Intention to Review (Proposed Review of) Chapter 23 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884) and an Expanded Notice of Proposed Review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368). In addition, a Rule Review Plan for Chapter 23 was posted on the Secretary of State's Web site in October 2005.

TRS received no comments regarding the readoption of Chapter 23.

TRS has assessed whether the reasons for adopting or readopting the rules in Chapter 23 continue to exist. In conjunction with the review of Chapter 23, TRS readopts §23.1 (Complaints) without amendments. As part of the rule review, TRS readopts the following sections with amendments, as published elsewhere in this issue of the *Texas Register*:

§23.4 (Public Participation in Adoption of Rules), §23.5 (Nomination for Appointment to the Board of Trustees), §23.7 (Code of Ethics for Consultants, Agents, Financial Providers and Brokers), and §23.8 (Expenditure Reporting by Consultants, Agents, Financial Providers and Brokers). TRS finds that, with those changes, the rules in Chapter 23 reflect current law, policy, and procedure and are needed, and the reasons for initially adopting the rules continue to exist. TRS, therefore, readopts Chapter 23 and the rules contained in it, as described in this notice.

Statutory Authority: Chapter 23 is readopted under §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Cross-reference to Statute: The readoption of Chapter 23 affects the following statutes in the Government Code - §825.002, which provides for the nomination of persons for appointment to the TRS board; §825.113, which relates to miscellaneous board duties, including relating to complaints and opportunity to appear before the board; §825.115, which makes TRS subject to the administrative procedure law, Chapter 2001 of the Government Code; §825.212, which provides for the adoption and enforcement of an ethics policy for employees, consultants, and advisors of the retirement system and requires the filing of reports showing expenditures made on behalf of TRS trustees or employees; §825.511, which relates to complaint files; §2001.021, which provides for an interested person to petition TRS for the adoption of a rule; and §2001.029, which provides all interested persons a reasonable opportunity to comment on a proposed rule before TRS adopts it.

This concludes the review of Chapter 23 (Administrative Procedures).

TRD-200700599
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Filed: February 16, 2007

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The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or system) adopts the review of Chapter 25 (Membership Credit) in accordance with §2001.039 of the Texas Government Code and the related rules of the Secretary of State. The initial Notice of Intention to Review (Proposed Review of) Chapter 25 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884) and an Expanded Notice of Proposed Review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368). In addition, a Rule Review Plan for Chapter 25 was posted on the Secretary of State's Web site in October 2005.

TRS received no comments regarding the readoption of Chapter 25.

TRS has assessed whether the reasons for adopting or readopting the rules in Chapter 25 continue to exist. In conjunction with the review of Chapter 25, TRS readopts the following sections without amendments: In Subchapter A (Service Eligible for Membership) - §25.2 (Bus Drivers), §25.3 (Independent or Third-Party Contractors), §25.4 (Substitutes), §25.6 (Part-time or Temporary Employment), §25.10 (Student Employment); in Subchapter B (Compensation) - §25.22 (Contributions to Cafeteria Plans and Deferred Compensation), §25.24 (Performance Pay), §25.25 (Required Deposits), §25.26 (Annual Compensation Creditable for Benefit Calculation), §25.28 (Payroll Report Dates), §25.30 (Conversion of Noncreditable Compensation to Salary), §25.31 (Percentage Limits on Compensation Increases), §25.34 (Membership Waiting Period), §25.35 (Employer Payments for New Members); in Subchapter E (Military Service) - §25.61 (Service Credit for Eligible Military Duty), §25.64 (Crediting Fee),

§25.66 (Application for Military Credit); in Subchapter F [Veteran's (USERRA) Service Credit] - §25.71 (Service Credit for Eligible Active Military Duty Under the Uniformed Services Employment and Re-Employment Rights Act), §25.72 (Limitations on Eligible Service), §25.73 (Ineligible Military Service), §25.74 (Cost), §25.76 (Eligibility of Retiree); in Subchapter G (Purchase of Credit for Out-of-State Service) - §25.81 (Out-of-State Service Eligible for Credit), §25.84 (Crediting Fees), §25.85 (Amount of Out-of-State Service Which Can Be Purchased), §25.86 (Computing Average Compensation), §25.87 (Effective Date of Out-of-State Service Credit and Time for Payment); in Subchapter I (Verification of Service) - §25.122 (Affidavit); in Subchapter J (Creditable Time and School Year) - §25.132 (Paid Leave Time), §25.133 (School Year), §25.134 (Credit Limit); in Subchapter K (Developmental Leave) - §25.151 (Developmental Leave, Eligibility, Cost), §25.152 (Application and Payment for Developmental Leave Credit); in Subchapter L (Other Special Credit Service) - §25.162 (State Personal or Sick Leave Credit), §25.163 (Service Credit Purchase); in Subchapter M (Optional Retirement Program) - §25.171 (Election of ORP), §25.172 (ORP and TRS); and in Subchapter N (Installment Payments) - §25.181 (Minimum Monthly Payment), §25.182 (Yearly Increments of Credit), §25.183 (Nonpayment), §25.185 (Amounts Not Refundable), §25.186 (Automatic Bank Draft), §25.188 (Payment by Beneficiary), §25.189 (Fees Set at the Time of First Payment), §25.190 (Employer Pick-up of Installment Payments). TRS withdrew the proposed amendments to §25.31 (Percentage Limits on Compensation Increases) as published in the November 10, 2006, issue of the *Texas Register*.

Also as a result of the rule review of Chapter 25, TRS readopts the following sections with amendments, as published elsewhere in this issue of the *Texas Register*: In Subchapter A (Service Eligible for Membership) - §25.1 (Full-time Service); in Subchapter B (Compensation) - §25.21 (Compensation Subject to Deposit and Credit), §25.33 (Contribution Limitation Based on Compensation); in Subchapter C (Unreported Service or Compensation) - §25.41 (Required Deposits), §25.42 (Payment of Benefits Contingent on Deposits), §25.43 (Deposits for Unreported Service), §25.45 (Verification of Unreported Compensation), §25.46 (Determination of Compensation Subject to Deposit and Credit); in Subchapter F [Veteran's (USERRA) Service Credit] - §25.75 (Application for Eligible Active Military Duty Under the Uniformed Services Employment and Re-Employment Rights Act); in Subchapter G (Purchase of Credit for Out-of-State Service) - §25.82 (Cost); in Subchapter H (Joint Service with Employees Retirement System) - §25.113 (Transfer of Credit between TRS and ERS); in Subchapter I (Verification of Service) - §25.121 (Employer Verification), §25.123 (Certification); in Subchapter J (Creditable Time and School Year) - §25.131 (Required Service); in Subchapter L (Other Special Credit Service) - §25.161 (Work Experience Service Credit), §25.164 (Credit for Service During School Year With Membership Waiting Period); in Subchapter N (Installment Payments) - §25.184 (Refund for Nonpayment); in Subchapter O (Rollover Distributions and Transfers to TRS) - §25.201 (Acceptance of Rollovers and Transfers for Purchase of TRS Credit); and in Subchapter P (Calculation of Fees) - §25.301 (Calculation of Fees).

Further, as a result of the review of Chapter 25, TRS repeals §25.44 (Service Eligibility) in Subchapter C and adopts new §25.302 (Calculation of Actuarial Cost) in Subchapter P, as published elsewhere in this issue of the *Texas Register*.

TRS finds that, with the changes described above, the rules in Chapter 25 reflect current law, policy, and procedure and are needed, and the reasons for initially adopting the rules continue to exist. TRS, therefore, readopts Chapter 25 and the rules contained in it but for §25.44, as described in this notice.

Statutory Authority: Chapter 25 is readopted under the following statutes in the Government Code - §805.009, which authorizes the Board to adopt rules for the administration of Chapter 805; §823.002, which authorizes the Board to determine by rule the amount of service equivalent to a year of service credit; §823.005, which authorizes the Board to adopt rules for the acceptance of rollovers; §825.102, which authorizes the Board to adopt rules for the eligibility for membership, administration of the funds of the retirement system, and the transaction of the business of the Board; §825.110, which requires the board to adopt rules that include a percentage limit on increases in annual compensation; §825.410, which authorizes the Board to adopt rules to implement the statutory provisions on installment payments; and §825.506, which authorizes the Board to adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan.

Cross-reference to Statute: The readoption of Chapter 25 affects the following laws - Chapter 805, Government Code, which authorizes transfer of service credit between TRS and ERS; §821.001, Government Code, which defines "employee" and "annual compensation"; §822.001, Government Code, which states the membership requirement and provides for member compensation subject to reporting and contributions; §822.201, Government Code, which describes compensation subject to report and deduction for member contributions and to credit in benefit computations; §823.002, Government Code, which addresses service creditable in a year; §823.005, Government Code, authorizing TRS to accept rollovers and transfers of funds; §823.006, Government Code, providing for limits on contributions; §823.302, Government Code, providing for the payment of fees in connection with the purchase of military service credit; §823.304, Government Code, which authorizes the purchase of USERRA service credit; §823.401, providing for the payment of fees in connection with the purchase of out-of-state service credit and requiring the payment of actuarial cost for the establishment of out-of-state service credit; §823.404, requiring the payment of actuarial cost for the establishment of service credit for work experience by career or technology teacher; §823.406, requiring the payment of actuarial cost for the purchase of membership waiting period service credit; §823.501, providing for fees for the reinstatement of credit canceled by membership termination; §824.203, which provides for the calculation of a standard service retirement annuity using a five year salary average; §825.105, authorizing the Board to adopt actuarial tables; §825.403, Government Code, which provides for collection of member contributions and for fees on deposits required but not made, including audit of records used to document deductions required but not paid; §825.410, Government Code, providing for installment payments; §825.505, Government Code, which authorizes TRS to audit employer records; §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law; and Acts 2005, 79th Leg. Ch. 1312 (HB 3169), §§2, 3, & 4 and Acts 2005, 79th Leg., ch. 1359 (SB 1691), §55 and §63, which repeal the credit purchase option effective January 1, 2006 but provide that the repeal does not apply if an installment agreement existed immediately before January 1, 2006; Acts 2005, 79th Leg., ch. 1359 (Senate Bill 1691), §58, which provides for a three year salary average for grandfathered members; and 26 United States Code §401(a) providing for the qualification of retirement plans under the federal tax code and §415(c) providing for limitations on annual contributions to qualified plans.

This concludes the review of Chapter 25 (Membership Credit).

TRD-200700600

Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Filed: February 16, 2007



The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or system) adopts the review of Chapter 27 (Termination of Membership and Refunds) in accordance with §2001.039 of the Texas Government Code and the related rules of the Secretary of State. The initial Notice of Intention to Review (Proposed Review of) Chapter 27 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884) and an Expanded Notice of Proposed Review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368). In addition, a Rule Review Plan for Chapter 27 was posted on the Secretary of State's Web site in October 2005.

TRS received no comments regarding the readoption of Chapter 27.

TRS has assessed whether the reasons for adopting or readopting the rules in Chapter 27 continue to exist. In conjunction with the review of Chapter 27, TRS readopts the following sections without amendments: §27.4 (Refunds), §27.5 (Termination of Right to Benefits), and §27.10 (Forfeitures May Not Increase Benefits). As part of the rule review, TRS readopts the following sections with amendments, as published elsewhere in this issue of the *Texas Register*: §27.2 (Withdrawal by a Person in a Position Not Eligible for TRS Membership), §27.3 (False Affidavit and Ineligible Refunds), §27.6 (Reinstatement of an Account), and §27.8 (Reinstatement of Membership and Service Credit by ORP Participants). TRS finds that, with those changes, the rules in Chapter 27 reflect current law, policy, and procedure and are needed, and the reasons for initially adopting the rules continue to exist. TRS, therefore, readopts Chapter 27 and the rules contained in it, as described in this notice.

Statutory Authority: Chapter 27 is readopted under §825.102, Government Code, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board and under §825.506, which authorizes the board to adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan.

Cross-reference to Statute: The readoption of Chapter 27 affects the following statutes in the Government Code - Subchapter A of Chapter 822, which provides for required and optional TRS membership, exceptions to required membership, termination of membership and its effect, withdrawal of contributions, and resumption of terminated membership; Chapter 830, which establishes the Optional Retirement Program (ORP) as an alternative to participation in TRS for eligible employees; and 26 United States Code §401(a) providing for the qualification of retirement plans under the federal tax code.

This concludes the review of Chapter 27 (Termination of Membership and Refunds).

TRD-200700601
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Filed: February 16, 2007



The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or system) adopts the review of Chapter 29 (Benefits) in accordance with §2001.039 of the Texas Government Code and the related rules of the Secretary of State. The initial Notice of Intention to

Review (Proposed Review of) Chapter 29 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884) and an Expanded Notice of Proposed Review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368). In addition, a Rule Review Plan for Chapter 29 was posted on the Secretary of State's Web site in October 2005.

TRS received no comments regarding the readoption of Chapter 29.

TRS has assessed whether the reasons for adopting or readopting the rules in Chapter 29 continue to exist. In conjunction with the review of Chapter 29, TRS readopts the following sections without amendments: In Subchapter A (Retirement) - §29.4 (Actual Compensation), §29.5 (Computation of Retirement Benefits), §29.8 (Retirement Payment Plans), §29.9 (Survivor Benefits), §29.10 (Retirement Under Options 3 and 4), §29.11 (Actuarial Tables), §29.12 (Early Age Retirement Benefit Calculated on Law in Effect Before September 1, 2005), §29.13 (Changing Beneficiary for Survivor Benefits), §29.14 (Eligibility for Retirement at the End of May), §29.16 (Unpaid Benefits), §29.17 (Latest Date for Commencement of Benefits), §29.21 (Beneficiary Tables), §29.22 (Approval of Disability Retirements), §29.23 (Disability Retirement with Less Than 10 Years of Creditable Service), §29.24 (Purchase of Credit); in Subchapter B (Death Before Retirement) - §29.33 (Absence from Service), §29.34 (Limitations); in Subchapter C (Postretirement Increases) - §29.40 (Election of Recalculation of Benefit); in Subchapter E (Deferred Retirement Option Plan) - §29.62 (Unemployment During Deferred Retirement Option Plan), §29.63 (Deadline for Purchase of Special Service Credit); in Subchapter F (Partial Lump-Sum Payment) - §29.71 (Tables), §29.72 (Eligibility to Select PLSO); and in Subchapter G (Proportionate Retirement) - §29.80 (Eligibility for Normal Age Retirement). TRS withdrew the proposed amendments to §29.34 (Limitations) as published in the November 10, 2006, issue of the *Texas Register*.

Also as a result of the rule review of Chapter 29, TRS readopts the following sections with amendments, as published elsewhere in this issue of the *Texas Register*: In Subchapter A (Retirement) - §29.15 (Termination of Employment), §29.26 (Discontinuance of Disability Benefits); in Subchapter D (Plan Limitations) - §29.50 (Definitions), §29.51 (Plan Limitations on Retirement Benefits), §29.52 (Adjustment to Annual Benefit Limit), §29.55 (Limitation on Contributions); in Subchapter E (Deferred Retirement Option Plan) - §29.61 (Distribution); and in Subchapter F (Partial Lump-Sum Payment) - §29.70 (Distribution).

Further, as a result of the review of Chapter 29, TRS repeals §29.53 (Limitation for Participant in Defined Contribution Plan) in Subchapter D, as published elsewhere in this issue of the *Texas Register*.

TRS finds that, with the changes described above, the rules in Chapter 29 reflect current law, policy, and procedure and are needed, and the reasons for initially adopting the rules continue to exist. TRS, therefore, readopts Chapter 29 and the rules contained in it but for §29.53, as described in this notice.

Statutory Authority: Chapter 29 is readopted under the following statutes - §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; and §825.506, Government Code, which authorizes the Board to adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan and which require the board to adopt rules to ensure that benefits paid to a retiree, or to a beneficiary of a member or retiree, do not exceed the limits provided by §415 of the Internal Revenue Code of 1986 (26 U.S.C. §415). Chapter 29 is readopted with the repeal of §29.53 (Limitation for Participant in Defined Contribution Plan) under the following statute: §825.102, Government Code, which authorizes the Board to adopt

rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board.

Cross-reference to Statute: The readoption of Chapter 29 with unamended, amended, repealed, and new sections affects the following statutes in the Government Code - §821.001, providing a definition of "annual compensation"; §822.001, establishing the membership requirement and providing for member compensation subject to reporting and contributions; §822.201, providing for member compensation subject to reporting and contributions; Subchapter D (Establishment of Military Service) of Chapter 823, providing for the purchase of military service credit; Subchapter E (Establishment of Equivalent Membership Service) of Chapter 823, providing for the purchase of service credit for out-of-state service, developmental leave, unused state personal or sick leave, work experience by a career or technology teacher, and membership waiting period service; §823.006, providing for limits on contributions; §824.203, providing for the calculation of the standard service retirement annuity; §824.2045, providing for a partial lump sum option ("PLSO"); Subchapter D (Disability Retirement Benefits) of Chapter 824, providing for disability retirement benefits; Subchapter I (Deferred Retirement Option Plan) of Chapter 824, providing for participation in DROP; §825.403, providing for the collection of member contributions, including deductions previously required but not paid; §825.409, providing for employer pick-up of member contributions; §825.506, providing for the administration of the retirement plan as a qualified plan under federal tax law; §825.517, providing for an excess benefit arrangement; and 26 United States Code §401(a), providing for qualification of retirement plans under the federal tax code, §415, providing for limitations relating to qualified plans under the federal tax code, including limitations on benefits from a qualified plan, and §415(m), providing for a governmental excess benefit arrangement under the federal tax code. The readoption affects the following statutes in the Family Code - §9.302(e), relating to the pre-decree designation of an ex-spouse as beneficiary in retirement benefits of a public retirement system.

This concludes the review of Chapter 29 (Benefits).

TRD-200700602

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Filed: February 16, 2007



The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or system) adopts the review of Chapter 31 (Employment After Retirement) in accordance with §2001.039 of the Texas Government Code and the related rules of the Secretary of State. The initial Notice of Intention to Review (Proposed Review of) Chapter 31 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884) and an Expanded Notice of Proposed Review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368). In addition, a Rule Review Plan for Chapter 31 was posted on the Secretary of State's Web site in October 2005.

TRS received no comments regarding the readoption of Chapter 31.

TRS has assessed whether the reasons for adopting or readopting the rules in Chapter 31 continue to exist. In conjunction with the review of Chapter 31, TRS readopts the following sections without amendments: In Subchapter A (General Provisions) - §31.1 (Definitions), §31.2 (Monthly Certified Statement), and §31.3 (Exceptions Apply Only to Effective Retirements); in Subchapter B (Employment After Service Retirement) - §31.11 (Employment Resulting in Forfeiture of

Service Retirement Annuity) and §31.18 (Bus Driver Exception); and in Subchapter C (Employment After Disability Retirement) - §31.31 (Employment Resulting in Forfeiture of Disability Retirement Annuity), §31.32 (Half-Time Employment Up to 90 Days), and §31.33 (Substitute Service Up to 90 Days).

Also as a result of the rule review of Chapter 31, TRS readopts the following sections with amendments, as published elsewhere in this issue of the *Texas Register*: In Subchapter B (Employment After Service Retirement) - §31.12 (Exceptions to Forfeiture of Service Retirement Annuity), §31.13 (Substitute Service), §31.14 (One-Half Time Employment), §31.15 (Six-Month Exception), §31.16 (Acute Shortage Area Exception), §31.17 (Principal or Assistant Principal Exception), and §31.19 (Faculty Member of Professional Nursing Program); in Subchapter C (Employment After Disability Retirement) - §31.34 (Employment Up to Three Months on a One-Time Only Trial Basis); and in Subchapter D (Employer Pension Surcharge) - §31.41 (Return to Work Employer Pension Surcharge).

TRS finds that, with the changes described above, the rules in Chapter 31 reflect current law, policy, and procedure and are needed, and the reasons for initially adopting the rules continue to exist. TRS, therefore, readopts Chapter 31 and the rules contained in it as described in this notice.

Statutory Authority: Chapter 31 is readopted under the following statutes in the Government Code - §824.601, which authorizes the retirement system to adopt rules necessary for administering Subchapter G (relating to Loss of Benefits on Resumption of Service) of Chapter 824; §824.602, which requires the TRS Board of Trustees to adopt rules governing the employment of a substitute and defining "one-half time basis"; and §825.102, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board.

Cross-reference to Statute: The readoption of Chapter 31 affects the following statutes in the Government Code - §824.002, which provides for the effective date of retirement; §824.601, which provides for the loss of benefits on resumption of service; §824.602, which provides for exceptions to the general rule of forfeiture of retirement annuity for employment after retirement; and §825.4092, which provides for employer contributions (surcharges) for employed retirees.

This concludes the review of Chapter 31 (Employment After Retirement).

TRD-200700603

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Filed: February 16, 2007



The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or system) adopts the review of Chapter 33 (Legal Capacity) in accordance with §2001.039 of the Texas Government Code and the related rules of the Secretary of State. The initial Notice of Intention to Review (Proposed Review of) Chapter 33 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884) and an Expanded Notice of Proposed Review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368). In addition, a Rule Review Plan for Chapter 33 was posted on the Secretary of State's Web site in October 2005.

TRS received no comments regarding the readoption of Chapter 33.

TRS has assessed whether the reasons for adopting or readopting the rules in Chapter 33 continue to exist. In conjunction with the review

of Chapter 33, TRS readopts the following sections without amendments: §33.1 (Selection of Plan for Payment of Death Claim for a Minor Child), §33.3 (Selection of Plan for Payment of Death Claim for an Incapacitated Person), §33.4 (Selection of Retirement Plan for an Incapacitated Person), §33.6 (Power of Attorney), and §33.7 (Acceptable Signatures).

Also as a result of the rule review of Chapter 33, TRS readopts the following sections with amendments, as published elsewhere in this issue of the *Texas Register*: §33.2 (Payments for the Account of a Minor Child or Incapacitated Person) and §33.5 (Approval of Designated Beneficiary).

TRS finds that, with the changes described above, the rules in Chapter 33 reflect current law, policy, and procedure and are needed, and the reasons for initially adopting the rules continue to exist. TRS, therefore, readopts Chapter 33 and the rules contained in it as described in this notice.

Statutory Authority: Chapter 33 is readopted under the following statutes in the Government Code - §825.102, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Cross-reference to Statute: The readoption of Chapter 33 affects the following statutes in the Government Code - §824.404, which provides for survivor benefits and selection for plan of payment, including those made by a guardian on behalf of a minor child; and §825.508, which provides that persons entitled to an annuity payment or other benefits administered by TRS may designate an authorized representative by power of attorney.

This concludes the review of Chapter 33 (Legal Capacity).

TRD-200700604
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Filed: February 16, 2007

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The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or system) adopts the review of Chapter 35 (Payments by TRS) in accordance with §2001.039 of the Texas Government Code and the related rules of the Secretary of State. The initial Notice of Intention to Review (Proposed Review of) Chapter 35 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884) and an Expanded Notice of Proposed Review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368). In addition, a Rule Review Plan for Chapter 35 was posted on the Secretary of State's Web site in October 2005.

TRS received no comments regarding the readoption of Chapter 35.

TRS has assessed whether the reasons for adopting or readopting the rules in Chapter 35 continue to exist. In conjunction with the review of Chapter 35, TRS readopts §35.2 (Direct Rollovers from TRS) without amendments. Also as a result of the rule review of Chapter 35, TRS readopts §35.1 (Computation Error) with amendments, as published elsewhere in this issue of the *Texas Register*.

TRS finds that, with the changes described above, the rules in Chapter 35 reflect current law, policy, and procedure and are needed, and the reasons for initially adopting the rules continue to exist. TRS, therefore, readopts Chapter 35 and the rules contained in it as described in this notice.

Statutory Authority: Chapter 35 is readopted under the following statutes in the Government Code - §825.102, which authorizes the

Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board, and §824.601(f), which authorizes the Board to adopt rules necessary for the administration of Government Code Chapter 804, Subchapter G, Loss of Benefits on Resumption of Service, relating to employment after retirement.

Cross-reference to Statute: The readoption of Chapter 35 affects the following statutes in the Government Code - §802.1024, which provides for the correction of errors in the payment of benefits by a retirement system; §825.109, which provides for the correction of errors by TRS so that future payments will be adjusted to reflect the actuarial equivalent of the benefits to which the person is entitled; §823.002, which establishes requirements for the correction of errors related to the determination of creditable service; §824.006, which provides that a monthly annuity is payable to a retiree or beneficiary through the month in which the person entitled to the annuity dies; §824.601, which provides that a retiree is not entitled to benefit payments for any month in which the retiree is employed in Texas public education, except as provided for by §824.602; §403.055, which prohibits payments to debtors or delinquents; and §403.0551, which provides for deductions for repayment of certain debts or tax delinquencies.

This concludes the review of Chapter 35 (Payments by TRS).

TRD-200700605
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Filed: February 16, 2007

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The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or system) adopts the review of Chapter 39 (Proof of Age), in accordance with §2001.039 of the Texas Government Code and the related rules of the Secretary of State. The initial Notice of Intention to Review (proposed review) Chapter 39 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884) and an expanded notice of proposed review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368). In addition, a Rule Review Plan for Chapter 39 was posted on the Secretary of State's Web site in October 2005.

TRS received no comments regarding the readoption of Chapter 39.

TRS has assessed whether the reasons for adopting or readopting the single rule contained in Chapter 39, §39.1 (Establishment of Date of Birth), continue to exist. TRS finds that §39.1 reflects current law, policy, and procedure and is needed, and the reasons for initially adopting Chapter 39 and §39.1 continue to exist. TRS readopts §39.1 without amendment.

Statutory Authority: Chapter 39 is readopted under §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Cross-reference to Statute: The readoption of Chapter 39 affects the following statutes in the Government Code - Chapter 824, Benefits, which provides for eligibility for certain benefits based on age, reductions to benefits based on early age, and the adoption of actuarial tables, which relate to age of a member or beneficiary.

This concludes the review of Chapter 39 (Proof of Age).

TRD-200700606

Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Filed: February 16, 2007



The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or system) adopts the review of Chapter 41 (Health Care and Insurance Programs) in accordance with §2001.039 of the Texas Government Code and the related rules of the Secretary of State. The initial Notice of Intention to Review (Proposed Review of) Chapter 41 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884) and an Expanded Notice of Proposed Review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368). In addition, a Rule Review Plan for Chapter 41 was posted on the Secretary of State's Web site in October 2005.

TRS received no comments regarding the readoption of Chapter 41.

TRS has assessed whether the reasons for adopting or readopting the rules in Chapter 41 continue to exist. In conjunction with the review of Chapter 41, TRS readopts the following sections without amendments: In Subchapter A (Retiree Health Care Benefits (TRS-Care)) - §41.1 (Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)), §41.2 (Additional Enrollment Opportunity), §41.3 (Retirees Advisory Committee), §41.4 (Employer Health Benefit Surcharge), §41.5 (Payment of Contributions), §41.6 (Required Contributions from Public Schools), §41.7 (Effective Date of Coverage), §41.8 (Eligible Bidders), §41.9 (Bid Procedure), §41.10 (Eligibility to Enroll in the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act), §41.11 (Years of Service Credit Used to Determine Premiums), §41.14 (Expulsion from TRS-Care for Fraud); in Subchapter B (Long-Term Care, Disability, and Life Insurance) - §41.20 (Effective Date of Coverage Under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program); and in Subchapter C (Texas School Employees Group Health (TRS-ActiveCare)) - §41.45 (Required Information from School Districts with More than 1,000 Employees).

Also as a result of the rule review of Chapter 41, TRS readopts the following sections with amendments, as published elsewhere in this issue of the *Texas Register*: In Subchapter B (Long-Term Care, Disability, and Life Insurance) - §41.15 (Requirements to Bid on Insurance For School District Employees and Retirees Under Chapters 1576 and 1577 of the Insurance Code), §41.16 (Coverage Offered Under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program), §41.17 (Definitions), §41.18 (Eligibility for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program), §41.19 (Initial Enrollment Periods for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program); in Subchapter C (Texas School Employees Group Health (TRS-ActiveCare)) - §41.30 (Participation in the Texas School Employees Uniform Group Health Coverage Act (TRS-ActiveCare) by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers), §41.31 (Eligible Bidders), §41.32 (Bid Procedure), §41.33 (Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program), §41.34 (Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program), §41.35 (Coverage Plans), §41.36 (Enrollment Periods for the TRS-ActiveCare Program), §41.37 (Effective Date of Coverage), §41.38 (Termination Date of Coverage), §41.39 (Coverage for Individuals Changing Employers), §41.40 (Coverage Continuation While on Leave Without Pay), §41.41 (Premium Payment), §41.50 (Adjudication of Claims), §41.51 (Appeals

Relating to Eligibility), and §41.52 (Expulsion from TRS-ActiveCare Program); and in Subchapter D (Comparability of Group Health Coverages) - §41.91 (Certification of Insurance Coverage).

TRS finds that, with the changes described above, the rules in Chapter 41 reflect current law, policy, and procedure and are needed, and the reasons for initially adopting the rules continue to exist. TRS, therefore, readopts Chapter 41 and the rules contained in it, as described in this notice.

Statutory Authority: Chapter 41 is readopted under the following statutes - §1575.052, Insurance Code, which authorizes TRS to adopt rules necessary to implement and administer the Texas Public School Employees Group Insurance Program (TRS-Care program); §1575.205, Insurance Code, which requires TRS to adopt rules for the collection of additional contributions from participants to cover the costs of an optional plan elected under the TRS-Care program; §1575.212, Insurance Code, which requires TRS to adopt rules establishing ranges for payments by retirees under the TRS-Care program; §1575.407, Insurance Code, which requires TRS to adopt procedural rules for the Retirees Advisory Committee to follow; §1576.006, Insurance Code, which authorizes TRS to adopt rules relating to the group long-term care insurance program as TRS considers necessary; §1579.052, Insurance Code, which authorizes TRS to adopt rules relating to the health benefits program established under the Texas School Employees Uniform Group Health Coverage Act (Chapter 1579, Insurance Code) (the TRS-ActiveCare program) as TRS considers necessary, including rules relating to the adjudication of claims and expelling participants from the program for cause; §1579.101, Insurance Code, which requires TRS to establish by rule plans for group coverages under the TRS-ActiveCare program and to define by rule the requirements of each coverage plan and tier of coverage; §1579.102, Insurance Code, which requires TRS to prescribe by rule the coverage provided under the TRS-ActiveCare catastrophic coverage plan; and §22.004, Education Code, which requires TRS to adopt rules to determine whether a school district's group health coverage is comparable to the basic health coverage offered under the Texas Employees Group Benefits Act.

Cross-reference to Statute: The readoption of Chapter 41 affects the following laws - §1575.107, Insurance Code, relating to TRS rules on competitive bidding requirements under the TRS-Care program; §1575.052, Insurance Code, relating to TRS rules on open enrollment periods under the TRS-Care program; §1575.255, Insurance Code, relating to TRS rules on federal or private source contributions to an active employee's salary; §1576.001, Insurance Code, which contains various definitions; §1576.008, Insurance Code, which addresses competitive bidding requirements under the group long-term insurance program; §1579.002, Insurance Code, which contains general definitions; §1579.003, Insurance Code, which contains the definition of an "employee"; §1579.004, Insurance Code, which contains the definition of a "dependent"; §1579.055, Insurance Code, which provides that the trustee is not required to select the lowest bid and may also consider any relevant criteria; §1579.101, Insurance Code, which authorizes plans of group coverages; §1579.104, Insurance Code, which addresses optional coverages that can be offered under TRS-ActiveCare; §1579.151, Insurance Code, relating to rules describing elections available to school districts with 500 or fewer employees and elections available to various other entities eligible to participate in TRS-ActiveCare; §1579.152, Insurance Code, which addresses participation in TRS-ActiveCare by school districts with more than 500 employees; §1579.1525, Insurance Code, which addresses participation in TRS-ActiveCare before September 1, 2005, by school districts with more than 500 employees; §1579.153, Insurance Code, which addresses participation in TRS-ActiveCare by certain risk pools; §1579.154, Insurance Code, which addresses partici-

pation in TRS-ActiveCare by eligible charter schools; §1579.201, Insurance Code, which provides that the terms "full-time employee" and "part-time employee" shall have the meanings assigned by rules adopted by the trustee; §1579.202, Insurance Code, which describes "eligible employees" for TRS-ActiveCare; §1579.203, Insurance Code, which addresses the ability of an eligible employee to select different coverage plans; and §1579.255, Insurance Code, which addresses payments to TRS-ActiveCare by participating entities.

This concludes the review of Chapter 41 (Health Care and Insurance Programs).

TRD-200700607

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Filed: February 16, 2007



The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or system) adopts the review of Chapter 43 (Contested Cases) in accordance with §2001.039 of the Texas Government Code and the related rules of the Secretary of State. The initial Notice of Intention to Review (Proposed Review of) Chapter 43 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884) and an Expanded Notice of Proposed Review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368). In addition, a Rule Review Plan for Chapter 43 was posted on the Secretary of State's Web site in October 2005.

TRS received no comments regarding the readoption of Chapter 43.

TRS has assessed whether the reasons for adopting or readopting the rules in Chapter 43 continue to exist. In conjunction with the review of Chapter 43, TRS readopts the following rules without amendments: §43.2 (Effect of Invalidity of Rule), §43.4 (Decisions Subject to Review by an Adjudicative Hearing), §43.5 (Request for Adjudicative Hearing), §43.7 (Computation of Time), §43.11 (Classification of Pleadings), §43.13 (Filing of Pleadings and Amendments), §43.14 (Briefs), §43.17 (Agreements To Be in Writing), §43.19 (Additional Parties), §43.21 (Lead Counsel), §43.24 (Prehearing Conference and Orders), §43.25 (Conduct of Hearing), §43.26 (General Admissibility), §43.27 (Exhibits), §43.29 (Limit on Number of Witnesses), §43.33 (Failure to Appear), §43.35 (Official Notice), §43.36 (Ex Parte Consultations), §43.40 (The Record), §43.41 (Findings of Fact), §43.43 (Subpoenas and Commissions), §43.46 (Rehearings), and §43.47 (Procedures Not Otherwise Provided).

Also as part of the rule review of Chapter 43, TRS readopts the following sections with amendments, as published elsewhere in this issue of the *Texas Register*: §43.1 (Administrative Review of Individual Requests), §43.3 (Definitions), §43.6 (Filing of Documents), §43.8 (Extensions), §43.9 (Docketing of Adjudicative Hearing, Dismissal, and SOAH Authority), §43.10 (Authority to Grant Relief), §43.12 (Form of Petitions and Other Pleadings), §43.15 (Motions), §43.16 (Notice of Hearing and Other Action), §43.18 (Motion for Consolidation), §43.20 (Appearance and Representation), §43.23 (Powers of the Administrative Law Judge), §43.28 (Pre-filed Direct Testimony in Disability Appeal Proceedings), §43.34 (Conduct and Decorum at Hearing), §43.37 (Recording of the Hearing; Certified Language Interpreter), §43.38 (Dismissal without Hearing), §43.39 (Summary Disposition), §43.42 (Reopening of Hearing), §43.44 (Discovery), and §43.45 (Proposals for Decision, Exceptions, and Appeals to the Board of Trustees).

TRS finds that, with those changes, the rules in Chapter 43 reflect current law, policy, and procedure and are needed, and the reasons for

initially adopting the rules continue to exist. TRS, therefore, readopts Chapter 43 and the rules contained in it, as described in this notice.

Further, as a result of the review of Chapter 43, TRS adopts new §43.48 (Cost of Preparing Administrative Record), as published elsewhere in this issue of the *Texas Register*. TRS notes that the section title of new §43.48, "Cost of Preparing Administrative Record," was correctly stated in the proposed rule preamble published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9263) and was incorrectly stated in the expanded notice of proposed review published in that same issue (31 TexReg 9372).

Statutory Authority: Chapter 43 is readopted under the following statutes - §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board; §825.115, Government Code, which authorizes the Board to adopt rules for the implementation of §825.115(b), Government Code, relating to a final decision in a contested case; and §2001.177, Government Code, which authorizes a state agency by rule to require an appealing party to pay the cost of preparation of the record of the agency proceeding that is required to be sent to the reviewing court.

Cross-reference to Statute: The readoption of Chapter 43 affects the following statutes - §825.115, Government Code, which addresses the applicability of Chapter 2001, Government Code, including the making of final decision in a proceeding considered to be a contested case under Chapter 2001; Chapter 551, Government Code, regarding open meetings; and Chapter 2003, Government Code, regarding the State Office of Administrative Hearings.

This concludes the review of Chapter 43 (Contested Cases).

TRD-200700608

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Filed: February 16, 2007



The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or system) adopts the review of Chapter 47 (Qualified Domestic Relations Orders) (QDROs) in accordance with §2001.039 of the Texas Government Code and the related rules of the Secretary of State. The initial Notice of Intention to Review (Proposed Review of) Chapter 47 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884) and an Expanded Notice of Proposed Review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368). In addition, a Rule Review Plan for Chapter 47 was posted on the Secretary of State's Web site in October 2005.

TRS received no comments regarding the readoption of Chapter 47.

TRS has assessed whether the reasons for adopting or readopting the rules in Chapter 47 continue to exist. In conjunction with the review of Chapter 47, TRS readopts the following rules without amendments: §47.1 (Payments by TRS), §47.2 (Submission of Orders), §47.3 (Review of Orders), §47.4 (Payment Pursuant to Qualified Orders), §47.5 (Orders Not Qualified), §47.6 (Determination That An Order Is Not Qualified Is Final), §47.7 (Submission of Amended Order), §47.8 (Orders Affecting Optional Retirement Program), §47.9 (Orders Affecting Benefits from More Than One Public Retirement System), §47.13 (Benefits Resulting from Resumption of Membership and Reinstatement of Service Credit), §47.14 (Reinstatement of Service Credit), §47.15 (Death of an Alternate Payee), and §47.16 (Effective Date of TRS Review of Orders).

Also as part of the rule review of Chapter 47, TRS readopts the following sections with amendments, as published elsewhere in this issue of the *Texas Register*: §47.10 (Determination of Whether an Order Is a Qualified Domestic Relations Order) and §47.17 (Calculation for Alternate Payee Benefits Before a Member's Benefit Begins).

TRS finds that, with those changes, the rules in Chapter 47 reflect current law, policy, and procedure and are needed, and the reasons for initially adopting the rules continue to exist. TRS, therefore, readopts Chapter 47 and the rules contained in it, as described in this notice.

Statutory Authority: Chapter 47 is readopted under the following statutes - §804.003, Government Code, which authorizes TRS to adopt rules relating to QDROs; §804.005(g), Government Code, which authorizes TRS to adopt rules for the administration of §804.005; §824.1012(c), Government Code, which authorizes TRS to establish by rule procedures and documentation necessary for the administration of the section, relating to revocation of beneficiary designation for certain retirement benefit options; and §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board. The chapter is also readopted in conjunction with 26 United States Code §414(p) relating to QDROs and qualified plans.

Cross-reference to Statute: The readoption of Chapter 47 affects the following statutes - Chapter 804, Government Code, which relates to domestic relations orders and spousal consent; §821.005, Government Code, which relates to exemption from execution; §824.1012, Government Code, which, in connection with a divorce proceeding, provides for a court-approved revocation of beneficiary designation for certain retirement benefit options; §824.1013, Government Code, which provides for the court-ordered change of beneficiary after retirement; §824.402, Government Code, which relates to the payment of benefits on the death of an active member; §824.404, Government Code, which relates to the election of payment type for survivor benefits; §824.803, Government Code, which addresses the computation of a participant's service and annuity under the deferred retirement option plan (DROP); §824.804, Government Code, which relates to benefits under DROP; §7.003, Family Code, which addresses disposition of retirement and employment benefits and other plans; Chapter 9, Subchapter B, Family Code, which addresses a post-decree qualified domestic relations order; and §9.302(e), Family Code, which addresses a pre-decree designation of ex-spouse as beneficiary of retirement benefits of a public retirement system.

This concludes the review of Chapter 47 (Qualified Domestic Relations Orders).

TRD-200700609

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Filed: February 16, 2007



The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or system) adopts the review of Chapter 49 (Collection of Delinquent Obligations) in accordance with §2001.039 of the Texas Government Code and the related rules of the Secretary of State. The initial Notice of Intention to Review (Proposed Review of) Chapter 49 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884) and an Expanded Notice of Proposed Review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368). In addition, a Rule Review Plan for Chapter 49 was posted on the Secretary of State's Web site in October 2005.

TRS received no comments regarding the readoption of Chapter 49.

TRS has assessed whether the reasons for adopting or readopting the rules in Chapter 49 continue to exist. In conjunction with the review of Chapter 49, TRS readopts the following rules without amendments: §49.1 (Collection Procedures), §49.2 (Demand Letters), §49.3 (Referrals of Delinquent Obligations to Attorney General for Collection), §49.4 (Extension of Deadlines), §49.5 (Records), §49.6 (Supplemental and Alternative Collection Procedures), and §49.7 (Exceptions).

TRS finds that the rules in Chapter 49 reflect current law, policy, and procedure and are needed, and the reasons for initially adopting the rules continue to exist. TRS, therefore, readopts Chapter 49 and the rules contained in it without amendments, as described in this notice.

Statutory Authority: Chapter 49 is readopted under the following statutes - §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board. In addition, §2107.002, Government Code, generally provides for the system to adopt rules for the collection of delinquent obligations.

Cross-reference to Statute: The readoption of Chapter 49 affects the following statutes in the Government Code - §403.055, which relates to payments to debtors or delinquents; §403.0551, which relates to deductions for repayment of certain debts or tax delinquencies; and §825.101, which provides that the board is responsible for general administration of the retirement system and has exclusive control over the assets of the system.

This concludes the review of Chapter 49 (Collection of Delinquent Obligations).

TRD-200700610

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Filed: February 16, 2007



The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or system) adopts the review of Chapter 51 (General Administration) in accordance with §2001.039 of the Texas Government Code and the related rules of the Secretary of State. The initial Notice of Intention to Review (Proposed Review of) Chapter 51 was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2884) and an Expanded Notice of Proposed Review was published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9368). In addition, a Rule Review Plan for Chapter 51 was posted on the Secretary of State's Web site in October 2005.

TRS received no comments regarding the readoption of Chapter 51.

TRS has assessed whether the reasons for adopting or readopting the rules in Chapter 51 continue to exist. In conjunction with the review of Chapter 51, TRS readopts the following rules without amendments: §51.2 (Vendor Protests, Dispute Resolution, and Hearing), §51.5 (Waiver of Deadline to Remit Deposits and Documentation), §51.7 (Assignment of TRS Vehicles), §51.11 (Historically Underutilized Businesses), and §51.12 (Applicability of Certain Laws in Effect Before September 1, 2005).

As part of the rule review, TRS readopts §51.1 (Advisory and Auxiliary Committees) with amendments, as published elsewhere in this issue of the *Texas Register*. TRS finds that, with those changes, the rules in Chapter 51 reflect current law, policy, and procedure and are needed, and the reasons for initially adopting the rules continue to exist. TRS, therefore, readopts Chapter 51 and the rules contained in it, as described in this notice.

Statutory Authority: Chapter 51 is readopted under the following statutes - §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board; and §825.114, Government Code, which requires TRS by rule to determine the amount and manner of any compensation or expense reimbursement to be paid members of an advisory committee performing service for the retirement system on an advisory committee.

Cross-reference to Statute: The readoption of Chapter 51 affects the following statutes - §824.202, Government Code, which provides for eligibility for service retirement; §824.203, Government Code, which provides for standard service retirement benefits; §824.2045, Government Code, which provides for the partial lump sum options; §825.103, Government Code, which provides for the administration of system assets and the system's exclusive authority over the purchase of goods and services using money other than money appropriated from the general revenue fund; §825.204, Government Code, which requires the TRS Board to appoint a medical board; §825.114, which authorizes the Board to establish advisory committees as it considers necessary; §825.514, Government Code, which relates to historically underutilized businesses; §2161.003, Government Code, which relates to the

adoption of rules for the use historically underutilized businesses by a state agency; §2155.076, Government Code, which provides for the adoption by a state agency of rules relating to protest procedures for resolving vendor protests relating to purchasing issues; Chapter 1575, Subchapter H (§§1575.351 - 1575.363), Insurance Code, which addresses advisory committees and provides for the appointment of credentialing committees by TRS as trustee of the retirees health benefits program (TRS-Care) and as part of a coordinated care network, which TRS no longer administers; and Chapter 1575, Subchapter I (§§1575.401 - 1575.408), Insurance Code, which provides for the appointment and expense reimbursement of the Retirees Advisory Committee.

This concludes the review of Chapter 51 (General Administration).

TRD-200700611

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Filed: February 16, 2007

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §1.20(d)(3)(A)

Compliance Action or Report Required	Required Action to Regain Compliance**	Potential Penalty for Continued Non-Compliance*
Units leased to households that are not eligible because their income exceeds the allowable limit; occupied by non-eligible full time students; or noncompliance with senior age restrictions	Lease labeled "Do not renew lease--as soon as possible lease the unit to eligible household;" Lease to eligible household	Compliance penalty up to \$500 for violation of do not renew restriction; Compliance penalty of up to \$500 for repeated violation.
Rents charged exceed allowable limits or improperly calculated utility allowance	Owner/manager demonstrates reduction in rent and/or recalculation of utility allowance and refund difference to tenants	Compliance penalty up to the amount of uncorrected overcharge.
Property Condition Violations	Appropriate repairs completed and provide evidence	Compliance penalty based on severity of violation up to \$500 per violation.
Failure to Submit Reports Timely and or failure to execute and record program documents	After written notice of failure to receive report owner must provide corrective action support within 30 days	Compliance penalty of up to \$250 per additional notice sent for every 30 days of no response.
Change in eligible basis	Owner to cease charging for facilities and refund amounts collected and/or convert commercial space back to residential space as applicable	Compliance penalty up to amount not refunded or wrongly collected.
Failure to meet minimum set aside, violation of Available Unit Rule, or comply with rent and occupancy restrictions	Units should be rented to the appropriate income and rent restrictions for eligible households	Compliance penalty of up to \$200 per unit and potential listing as not participating in program.
Failure to follow Fair Housing or federal laws providing access by the general public or failure to comply with Section 8 minimum income to rent standard	Owner must to enter into a corrective action agreement and amend leasing requirements if appropriate	Report for possible fair housing violation, Compliance penalty of up to \$250 per violation.
Failure to maintain adequate documentation or certification for compliance	Owner to recertify accordingly and provide documentation upon completion	Compliance penalty of up to \$100 per request per 30 day period of failure to provide documentation.
Low income units used on transient basis	Owner should execute at least six month lease and provide evidence	Compliance penalty of up to \$100 per request per 30 day period of failure to provide documented lease.
Violation of the Unit Vacancy Rule	Property must advertise availability of units within 30 days and provide evidence	Compliance penalty of up to \$250 per 30 day period not advertised.

No evidence of material participation by a qualified nonprofit	Owner to correct issue and certify compliance within 60 days	Compliance penalty of up to \$500 per 30 days after 60 day corrective period.
Failure to provide agreed to supportive services	Corrective action within 30 days	Compliance penalty of up to \$500 per listed service not provided per month.
Failure to pay compliance fees or compliance penalties timely	After notice of fees due and payable within 30 days of notice	Begin collection proceedings. Add state allowable maximum interest rate and additional penalty of up to \$250 per 30 day period of nonpayment.
Failure to meet prescribed special needs set aside	Property must develop and follow adequate marketing plan utilizing organizations that work with special needs for corrective action within 60 days	Compliance penalty of up to \$250 per day for failure to develop and follow marketing plan per 30 day period. Additional penalties may exist for leasing to ineligible households.
Failure to meet Department minimum standards for rehabilitation act compliance	If discovered during development, potential correction of building. If discovered after building, establish an account to fund necessary modifications	Failure to correct will lead to limitation of future participation in Department programs up to and including Debarment for a period of time.
Continued non-compliance resulting in declaration of no longer participating in program	After written notice owner should provide a corrective action memo	Maximum compliance penalties allowed under LURA plus penalties for specific non-compliant items. Collection of penalties up to and including filing of liens and all legal actions including foreclosure. If property remains out of compliance for 12 months inclusion in Debarment list.
Determination of material Non-compliance for more than six months	After notice of violation corrective action plan developed with Department	Declaration that the property is "No longer participating in the program" and associated penalties and legal actions.
*Compliance penalties are in addition to point scoring for material non-compliance determination	**The Department may require additional training for persons who receive repeated non-compliance findings. The Department may include replacement of management or addition of a consultant as a component of corrective action for repeated non-compliance	

Figure 10 TAC §1.20(e)(1)

Non-Performance Contract Action	Required Action to Adequately Perform	Potential Penalties for Non-Performance
Failure to correct audit finding	Satisfactorily answer audit finding during timeline provided	Request repayment of funds; limitation of future payments; reduction in administrative fees allowed; implementation of §1.3 of this title; termination of current contract; bar of future contracts; added to debarment list
Failure to File required audit report	File audit report prior to deadline	Loss of contract; withholding of payments, implementation of §1.3 of this title; bar of future contracts
Failure to meet contract milestones	Development of corrective action and contract amendment	Reduction in administrative fees; termination of contract; withholding of funds requested
Failure to submit necessary Documentation	Submit required documents within 30 days of notification	Department will return faulty submission documents; reduction of administrative fees; withholding of payments; termination of contract; if not submitted bar of future contracts
Failure to timely request amendment	Request amendment prior to contract expiration in writing and signed by contract signatory authority made at least 90 days before contract end	Termination of contract; withholding of funds requested; reduction in administrative fees; audit finding; repayment of funds paid for work not under contract
Misappropriation of funds	Repayment of funds	Withholding of funds; criminal referral to District attorney; referral to Attorney General for legal action; termination of contract; inclusion in debarment list
Loss or removal of Federal Programs from subrecipient	Explanation of reason for loss of program and clearance to continue to receive other funds	Termination of contract; withholding of funds requested; inclusion in debarment list
Failure to execute contract	Execution of contract with 30 days of notice	Removal from contract administration system; termination of contract; withholding of any requested funds
Disallowed costs	Clearance of costs prior to deadline provided	Request of repayment of funds; withholding of funds; audit finding; implementation of §1.3 of this title
Failure to provide services contracted	Design corrective action plan and submit for approval	Request repayment of funds; withholding of requested funds; disallowed costs; audit findings; legal action to enforce contract under specific performance; termination of contract; reduction in administrative fees

Match not submitted in time or in a pro-rata share or insufficient documentation	Submit according to requirements or request amendment	Withholding of request funds; reduction of points on future applications; bar placed on contract monitoring system; limiting payments until pro-rata match is achieved; reduce administrative fees
Failure to request draw within required time	Must submit within the sixty day time frame or request an extension with sufficient justification as to the delay	Allow contract to expire in contract system without issuing payment; close out contract as completed; withholding of requested funds; reduction of administrative fees
Criminal charges filed against key staff	Report and explanation of charges and duties of charged staff	Audit of program related to charged staff; termination of contract; request for development of action plan for correction
Failure to respond to Department Correspondence	Respond with appropriate response prior to deadline provided not to exceed 30 days	Termination of contract; request for repayment of fees; withholding of requested funds; referral to Attorney General for enforcement; inclusion in debarment list

Figure: 10 TAC §1.20(e)(2)

Non-Performance Contract Action	Required Action to Adequately Perform	Potential Penalties for Non-Performance
Failure to follow federal laws regarding construction	Request waiver; submit plan for alternatives to reconstruction	Non-issuance of IRS Form 8609 if appropriate; request for repayment of all funds provided; compliance penalty equal to 5% of total award received; included on debarment list; referred to Attorney General for collection; termination of contract
Poor Construction Quality	Correct non-compliant construction; Develop a plan for corrective action	Request repayment of all funds; Non issuance of IRS Form 8609 if appropriate; refer to Attorney General for collection of funds; termination of contract; include all parties on debarment list
Failure to build units according to submitted application	Alter construction to meet plans; prepare alternatives for consideration	Non-issuance of IRS Form 8609 if appropriate; request for repayment of all funds provided; compliance penalty equal to 5% of total award received; included on debarment list; referred to Attorney General for collection; termination of contract
Agreement between consultants and Administrators	Submit copy of agreement for review prior to beginning work	Verify that the Department's required clauses involving audit provisions, debarment list penalties, and conflicts of interests are included; limit draws or submission of documents until such contracts are provided; reduction of administrative fees

Figure: 10 TAC §1.20(g)(2)(D)

Action	Potential Debarment Term
Failure to meet Department minimum accessibility standards for rehabilitation act compliance	1-10 years
Continued non-compliance resulting in declaration of no longer participating in program	1-10 Years
Determination of uncorrected material Non-compliance for more than six months	1-5 Years
Failure to correct audit finding	1-5 Years
Failure to File required audit report	1-5 Years
Failure to meet HOME contract milestones	1-5 Years
Failure to submit necessary Documentation	1-5 Years
Misappropriation of funds	In Perpetuity
Loss or removal of Federal Programs from subrecipient	Duration determined by Federal Agency for that Issue
Disallowed costs	Until Cured
Failure to provide services contracted	1-5 Years
Match not submitted in time or in a pro-rata share or insufficient documentation	1-5 Years
Charged with committing criminal actions	In Perpetuity
Failure to respond to Department Correspondence	Until Resolution
Failure to follow federal laws regarding construction	1-5 years
Poor Construction Quality	In Perpetuity
Failure to build units according to submitted application	1-10 Years

Figure: 31 TAC §65.72(b)(2)(C)

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Amberjack, greater.	1	32	No limit
Bass: Largemouth, smallmouth, spotted and Guadalupe bass.	5 (in any combination)		
Largemouth and Smallmouth bass.		14	No limit
Bass, striped, its hybrids, and subspecies.	5 (in any combination)	18	No limit
Bass, white	25	10	No limit
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in any combination)	12	No limit
Catfish, flathead.	5	18	No limit
Catfish, gafftopsail.	No limit	14	No limit
Cobia.	2	37	No limit
Crappie: white and black crappie, their hybrids, and subspecies.	25 (in any combination)	10	No limit
Drum, black.	5	14	30*
*Special Regulation: One black drum over 52 inches may be retained per day as part of the five-fish bag limit.			
Drum, red.	3*	20	28*
*Special Regulation: During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.			
Flounder: all species, their hybrids, and subspecies.	10*	14	No limit
*Special Regulation: The daily bag limit of 10 is the possession limit allowed for flounder for those fishing with a recreational license. The daily bag and possession limit for the holder of a valid Commercial Finfish Fisherman's license is 60 flounder, except on board a licensed commercial shrimp boat.			

Grouper, goliath.	0		
Mackerel, king.	2	27	No limit
Mackerel, Spanish.	15	14	No limit
Marlin, blue.	No limit	131	No limit
Marlin, white.	No limit	86	No limit
Mullet: all species, their hybrids, and subspecies.	No limit	No limit	*
*Special regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.			
Sailfish	No limit	84	No limit
Saugeye	3	18	No limit
Seatrout, spotted.	10	15	25*
*Special Regulation: One spotted seatrout greater than 25 inches may be retained per day.			
Shark: all species, their hybrids, and subspecies.	1	24	No limit
Sheepshead.	5	13*	No limit
*Special Regulation: Beginning on September 1, 2008, the size limit will be 14 inches. Beginning on September 1, 2009, the size limit will be 15 inches.			
Snapper, lane.	No limit	8	No limit
Snapper, red.	4*	13	No limit
*Special Regulation: Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook.			
Snapper, vermilion.	No limit	10	No limit
Snook.	1	24	28
Tarpon.	0*		
*Special Regulation: catch and release only.			
Trout: rainbow and brown trout, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Tripletail.	3	17	No limit.
Walleye.	5*	No limit	No limit
*Special regulation: Two walleye of less than 16 inches may be retained per day.			

Figure: 31 TAC §65.72(b)(2)(D)(i)

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
Lake Texoma (Cooke and Grayson).	5 (in any combination)	14	
In all waters in the Lost Maples State Natural Area (Bandera)	0	No Limit	Catch and release only.
Bass: largemouth and smallmouth			
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination with spotted bass)	14	Possession Limit is 10.
Bass: largemouth.			
Conroe (Montgomery and Walker), Fort Phantom Hill (Jones), Granbury (Hood), Possum Kingdom (Palo Pinto, Stephens, Young), Proctor (Comanche), and Ratcliff (Houston).	5	16	
Lakes Aquilla (Hill) , Bellwood (Smith), Braunig (Bexar), Bright (Williamson), Brushy Creek (Williamson), Bryan (Brazos), Calaveras (Bexar), Casa Blanca (Webb), Cleburne State Park (Johnson), Cooper (Delta and Hopkins), Fairfield (Freestone), Gilmer (Upshur), Jacksonville (Cherokee), Marine Creek Reservoir (Tarrant), Meridian State Park (Bosque), Old Mount Pleasant City (Titus), Pflugerville (Travis), Rusk State Park (Cherokee), and Welsh (Titus)	5	18	
Nelson Park Lake (Taylor) and Buck Lake (Kimble).	0	No Limit	Catch and release and only.
Lakes Alan Henry (Garza) and O.H. Ivie (Coleman, Concho, and Runnels).	5	No Limit	It is unlawful to retain more than two bass of less than 18 inches in length.

Purtis Creek State Park Lake (Henderson and Van Zandt), and Raven (Walker).	0	No Limit	Catch and release only except that any bass 21 inches or greater in length may be retained in a live well or other aerated holding device and immediately transported to the Purtis Creek or Huntsville State Park, or Gibbons Creek weigh stations. After weighing, the bass must be released immediately back into the lake or donated to the ShareLunker Program.
Lakes Bridgeport (Jack and Wise), Burke-Crenshaw (Harris), Caddo (Marion and Harrison), Davy Crockett (Fannin), Grapevine (Denton and Tarrant), Georgetown (Williamson), Madisonville (Madison), San Augustine City (San Augustine), and Sweetwater (Nolan)	5	14 - 18 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.
Lakes Athens (Henderson), Bastrop (Bastrop), Buescher State Park (Bastrop), Houston County (Houston), Joe Pool (Dallas, Ellis, and Tarrant), Mill Creek (Van Zandt), Murvaul (Panola), Nacogdoches (Nacogdoches), Pinkston (Shelby), Timpson (Shelby), Town (Travis), and Walter E. Long (Travis).	5	14 - 21 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
Lakes Fayette County (Fayette), Gibbons Creek Reservoir (Grimes), Monticello (Titus), and Ray Roberts (Cooke, Denton, and Grayson).	5	14 - 24 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Lake Fork (Wood, Rains and Hopkins)	5	16 - 24 Inch Slot Limit	It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Bass: smallmouth.			

Lakes O. H. Ivie (Coleman, Concho, and Runnels), Alan Henry (Garza), and Devil's River (Val Verde) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls.	3	18	
Lake Meredith (Hutchinson, Moore, and Potter).	3	12 - 15 Inch Slot Limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.
Bass: spotted			
Lake Alan Henry (Garza)	3	18	
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination with largemouth bass)	No Limit	Possession Limit is 10.
Bass: striped and white bass, their hybrids, and subspecies.			
Lake Toledo Bend (Newton, Sabine and Shelby).	5	No Limit	No more than 2 striped bass 30 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	10 (in any combination)	No Limit	No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 20.
Red River (Grayson) from Denison Dam downstream to and including Shawnee Creek (Grayson).	5 (in any combination)	No Limit	Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.

Lake Possum Kingdom (Palo Pinto, Stephens, Young) and Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	2 (in any combination)	18	
Bass: white			
Lakes Texoma (Cooke and Grayson) and Toledo Bend (Newton, Sabine, and Shelby).	25	No Limit	
Catfish: channel and blue catfish, their hybrids, and subspecies.			
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in any combination)	12	Possession limit is 50. The holder of a commercial fishing license may not retain channel or blue catfish less than 14 inches in length.
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	10 (in any combination)	12	No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	15 (in any combination)	12	
North Concho River (Tom Green) from O.C. Fisher Dam to Bell Street Dam, South Concho River (Tom Green) from Lone Wolf Dam to Bell Street Dam	5 (in any combination)	No limit	
Community fishing lakes	5 (in any combination)	No limit	
Bellwood (Smith), Dixieland (Cameron), and Tankersley (Titus).	5 (in any combination)	12	
Catfish: flathead			
Lake Texoma (Cooke and Grayson) and the Red River (Grayson) from Denison Dam to and including Shawnee Creek (Grayson).	5	20	
Crappie: black and white crappie, their hybrids and subspecies.			

Lake Toledo Bend (Newton, Sabine, and Shelby).	50 (in any combination)	10	Possession limit is 50. From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Fork (Wood, Rains, and Hopkins) and Lake O'The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in any combination)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Texoma (Cooke and Grayson).	37 (in any combination)	10	Possession limit is 50.
Drum, red.			
Lakes Braunig and Calaveras (Bexar), Coleta Creek Reservoir (Goliad and Victoria), Colorado City (Mitchell), Fairfield (Freestone), and Tradinghouse Creek (McLennan).	3	20	No maximum length limit.
Nasworthy (Tom Green)	No Limit	No Limit	
The Trinity River below Lake Livingston in Polk and San Jacinto Counties.	500 (in any combination)	No Limit	Possession Limit 1,000 in any combination.
Trout: Rainbow and brown trout, their hybrids, and subspecies.			
Guadalupe River (Comal) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. Road 306.	1	18	
Walleye.			
Lake Texoma (Cooke and Grayson).	5	18	

Figure: 31 TAC §65.72(b)(2)(D)(ii)

Location	Daily Bag	Minimum Length (Inches)	Special Regulation
Seatrout, spotted.	5*	15	25**
Lower Laguna Madre south of marker 21 (ICWW) in the landcut, including South Bay, the Brownsville ship channel, the Arroyo Colorado, and the water within the jetties to the extreme eastern tip of each jetty.			
*Special Regulation: The daily bag limit of 5 is the possession limit allowed for spotted seatrout. **Special Regulation: One spotted seatrout greater than 25 inches may be retained per day.			

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Public Notice Announcing Pre-Application Orientation (PAO) for Enrollment of Medicaid Waiver Program Providers

The Department of Aging and Disability Services (DADS) will hold a Pre-Application Orientation (PAO) for persons seeking to participate as a program provider in the Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) Medicaid Waiver Programs.

NOTE: Beginning with June 4, 2007, DADS will be charging a non-refundable fee of \$25.00 per registering legal entity for attending a PAO. This fee will cover two representatives per legal entity. No more than two representatives may attend and represent an entity. All fees must be submitted with the registration packet by money order or cashiers check payable to: Texas Department of Aging and Disability Services. DADS will not accept cash or personal checks. Registration packets received by DADS without the registration fees will not be processed and attendance to the PAO will not be allowed. There will be no exceptions.

The PAO will be held at 8:45 a.m., Monday, June 4, 2007, in Austin, Texas at the J. J. Pickle Center. Persons wanting to attend the PAO must request a registration form by mail or by fax. Faxed requests must be sent to the attention of Rodrick Pollock, Contract Specialist, at (512) 438-5522. Mailed requests must be sent to: Texas Department of Aging and Disability Services; Rodrick Pollock, Contract Specialist, Community Services Contracts (MC W-517); P.O. Box 149030; Austin, Texas 78714-9030.

Note: All written requests must include first and last name along with a complete mailing address and a telephone number. All requests must be legible.

Upon receipt of the written request, DADS will provide information regarding the enrollment process and a registration form for the PAO. To attend the PAO, an applicant must submit a completed registration form to DADS in a timely manner. A completed registration form is submitted timely only under the following conditions:

- (1) If mailed via the US Postal Service, the completed registration form bears a postmark date no later than Friday, May 4, 2007;
- (2) if sent via a common or contract carrier, a receipt by the carrier shows that it was placed in the hands of the carrier no later than Friday, May 4, 2007; or
- (3) if hand delivered, it is delivered directly to the DADS, Community Services Contracts Unit, 701 W. 51st Street (MC W-517), Austin, Texas, no later than Friday, May 4, 2007.

Persons requiring an interpreter for the deaf or hearing impaired, or any other accommodation, must contact Rodrick Pollock at (512) 438-5428, or the TTY telephone line of the Texas Relay at 1-800-735-2988 at least 72 hours before the PAO.

For any additional information concerning the PAO, you may contact Art G. Gonzales, Program Specialist, at (512) 438-5737. Further information regarding the PAO application process may be obtained on the DADS website at: http://www.dads.state.tx.us/business/mental_retardation/hcs/index.html.

Criminal History Record Information

In accordance with 42 Code of Federal Regulations (CFR) §455.106, all applicants must disclose to DADS criminal history record information about "all persons with an ownership or control interest" in the applicant, or an "agent" or "managing employee" of the applicant. Submission of the criminal history record information will be required with the DADS *Application for Participation*.

National Provider Identifiers

The Health Insurance Portability and Accountability Act (HIPAA) of 1996 requires health care entities to begin using National Provider Identifiers (NPI) on standard health care transactions. DADS is requiring all health care entities applying to contract with DADS to obtain and report their NPI number. You will be required to submit a NPI assignment letter or email from the National Plan and Provider Enumeration System (NPES), along with your *Application for Participation* packet, which will be provided at the PAO.

In order to comply with this HIPAA requirement, effective December 1, 2006, all new contract applicants must obtain and report their NPI number with their contract application.

TRD-200700679

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Filed: February 21, 2007

Office of the Attorney General

Notice of Settlement of a Texas Health and Safety Code Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Health and Safety Code Chapter 341. Before the State may settle a judicial enforcement action under the Health and Safety Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: State of Texas v. Prairie Grove Water Supply Corp., No. GV401418 in the 261st District Court of Travis County, Texas.

Nature of Defendant's Operations: Defendant operates a public water supply utility in Angelina County, Texas

Proposed Agreed Judgment: The judgment contains an injunction that prohibits violations of Health and Safety Code Chapter 341. The judgment also requires the defendant to pay \$2,500 in civil penalties and \$5,000 in attorney's fees to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for

copies of the judgment, and written comments on the proposed settlement should be directed to David Preister, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200700680
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: February 21, 2007

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 9, 2007, through February 15, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on February 21, 2007. The public comment period for these projects will close at 5:00 p.m. on March 23, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: GB Biosciences; Location: The project is located in wetlands adjacent to Greens Bayou, near the intersection of the Sam Houston Parkway and Interstate 10, in Houston, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Jacinto City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 289706; Northing: 289706. Project Description: The applicant proposes to amend the original authorization to include the filling of an additional 0.779 acre of adjacent wetlands. The purpose of the proposed fill is to facilitate the construction of a temporary storm water drainage ditch and to provide flood plain mitigation required by the Harris County Flood Control District (HCFCD). As mitigation, the applicant proposes to purchase 0.779 acre credits from the Greens Bayou Wetland Mitigation Bank. The original permit authorized the dredging of approximately 553,000 cubic yards of sediment from 35 acres of Greens Bayou, excavate approximately 15,000 cubic yards of sediment from 2,650 linear feet of the lower portion of the HCFCD ditch adjacent to Greens Bayou, excavate approximately 1.5 acres of uplands for a sediment borrow source, fill 0.5 acre of wetlands for the construction of an access road, and cap 2,650 linear feet of the lower portion of the HCFCD ditch with cement. CCC Project No.: 07-0111-F1; Type of Application: U.S.A.C.E. permit application #23735(01) is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Jefferson Triangle Marine LP; Location: The project is located in the Neches River, at the Triangle Marine Facility on Sulphur

Plant Road, in Beaumont, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 399177; Northing: 3323334. Project Description: The applicant proposes to construct enhancements of the existing basin to accommodate barge traffic for landside loading and offloading at the facility. The basin is separated into the West Wharf, South Wharf, and the East Wharf.

At the East Wharf, the applicant proposes to construct a 300-linear-foot bulkhead and excavate 5,000 cubic yards of material to -18 feet Mean Low Tide (MLT). The bulkhead and associated backfill will be located above the mean high tide line and will not require a permit. The 0.37-acre dredging area will be located along the bulkhead and will extend approximately 55 feet from the shoreline. Excavated material will be placed on the applicant's existing dredged material placement area.

At the South Wharf, the applicant proposes to construct a 300-linear-foot bulkhead and excavate 7,500 cubic yards of material to -18 feet MLT. The bulkhead and associated backfill will result in a discharge of fill material into open water. Less than 500 cubic yards of backfill will be required. The 0.55-acre dredging area will be located along the bulkhead and will extend approximately 80 feet from the shoreline. Excavated material will be placed on the applicant's existing dredged material placement area.

At the West Wharf, the applicant proposes to construct a 300-foot bulkhead, install 16 barge dolphins and three platforms, and excavate 18,000 cubic yards of material to -18 feet MLT. Excavated material will be placed on the applicant's existing dredged material placement area. The bulkhead and associated backfill will be located above the mean high tide line and will not require a permit. The applicant will construct a 900-foot-long by 15-foot-wide approach way, which will connect the three 60-foot-long by 30-foot-wide platforms. The 16 barge dolphins will line the shoreline of the West Wharf and will extend 5 feet from the proposed platforms. CCC Project No.: 07-0112-F1; Type of Application: U.S.A.C.E. permit application #24211 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200700617
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: February 20, 2007

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/26/07 - 03/04/07 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/26/07 - 03/04/07 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/07 - 03/31/07 is 8.25% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/07 - 03/31/07 is 8.25% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-200700673

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 21, 2007



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 2, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 2, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Aqua Development, Inc. dba Wilson Road Properties, Ltd.; DOCKET NUMBER: 2006-1965-MWD-E; IDENTIFIER: RN102343126; LOCATION: Harris County, Texas; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: 30 Texas Administrative Code (TAC) §305.125(1), Texas Pollution Discharge Elimination System (TPDES) Permit Number 13870001, Effluent Limitations and Monitoring Requirements Number 1 for Outfall 001A, and

the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: \$1,120; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77020-1486, (713) 767-3500.

(2) COMPANY: Bobby Sonny Johnson dba Blastmasters; DOCKET NUMBER: 2006-1971-AIR-E; IDENTIFIER: RN104916424; LOCATION: Gregg County, Texas; TYPE OF FACILITY: sandblasting and painting operation; RULE VIOLATED: 30 TAC §106.452(2)(D) and §116.110(a)(4) and Texas Health & Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to obtain a permit or meet the conditions of a permit by rule (PBR) prior to construction and operation of an abrasive cleaning operation; and 30 TAC §106.433(9) and §106.110(a)(4) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit or meet the conditions of a PBR prior to construction and operation of an unenclosed surface coating operation; PENALTY: \$4,200; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: C & R Distributing, Inc.; DOCKET NUMBER: 2006-2002-AIR-E; IDENTIFIER: RN102477627; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: unmanned gas dispensing station; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to ensure a minimum of 2.7% oxygenate in gasoline dispensed; PENALTY: \$1,100; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(4) COMPANY: Camp Olympia, Inc.; DOCKET NUMBER: 2006-2226-MWD-E; IDENTIFIER: RN101515435; LOCATION: Trinity, Trinity County, Texas; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 00014261001 Effluent Limitations and Monitoring Requirements, and the Code, §26.121(a), by failing to comply with the permit limit for total ammonia nitrogen; PENALTY: \$2,330; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: City of Childress; DOCKET NUMBER: 2006-2158-MWD-E; IDENTIFIER: RN101612604; LOCATION: Childress County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125, TPDES Permit Number WQ0010076002, Effluent Limitations and Monitoring Requirement Number 1, and the Code, §26.121(a), by failing to comply with permitted limits for five-day carbonaceous biochemical oxygen demand; PENALTY: \$2,800; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: City of Clarksville; DOCKET NUMBER: 2006-1394-PWS-E; IDENTIFIER: RN102929734; LOCATION: Clarksville, Red River County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level for total trihalomethanes; PENALTY: \$725; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(7) COMPANY: Commercial Metals Company; DOCKET NUMBER: 2006-1989-AIR-E; IDENTIFIER: RN102412376; LOCATION: Vinton, El Paso County, Texas; TYPE OF FACILITY: automobile shredding and metal recovery plant; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by allegedly having dispensed and utilized gasoline for use as a motor vehicle fuel which failed to

meet the minimum oxygen content of 2.7% by weight; PENALTY: \$1,400; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(8) COMPANY: Cooper Concrete Co.; DOCKET NUMBER: 2006-1943-IWD-E; IDENTIFIER: RN102457082; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: ready-mix concrete plant; RULE VIOLATED: 30 TAC §305.125(1), General Permit Number TXG110417 Section C, and the Code, §26.121(a), by failing to comply with the permit limit for total suspended solids (TSS) and pH and by failing to submit monitoring results; PENALTY: \$28,435; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Cowtown Petroleum Limited dba Cowtown Plaza; DOCKET NUMBER: 2006-1089-PST-E; IDENTIFIER: RN104473434; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Delek Refining, Ltd.; DOCKET NUMBER: 2006-1433-AIR-E; IDENTIFIER: RN100222512; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §122.143(4), Federal Operating Permit (FOP) O-01257, Special Terms and Conditions (STC), 3.A.iii. and 3.B.iii, and THSC, §382.085(b), by failing to maintain records of quarterly opacity observations; 30 TAC §101.20(2) and §122.143(4), 40 Code of Federal Regulations (CFR) §63.10(d)(5)(i) and §63.654(h), and THSC, §382.085(b), by failing to submit semiannual startup, shutdown, and malfunction reports; 30 TAC §115.214(b)(1)(C) and §116.115(c), New Source Review (NSR) Air Permit Number 72, Special Condition (SC) 5, FOP O-01257, STC 1.A., and THSC, §382.085(b), by loading tank trucks not having current leak test certifications; 30 TAC §113.340 and §122.143(4), 40 CFR §63.13(a) and §63.642(f), FOP O-01257, STC 11.F., and THSC, §382.085(b), by failing to submit a maximum achievable control technology (MACT) report; 30 TAC §116.115(c) and §122.143(4), NSR Air Permit Number 5955, SC 11.F., FOP O-01257, STC 13, and THSC, §382.085(b), by failing to conduct weekly cooling tower sampling; 30 TAC §116.115(c) and §122.143(4), NSR Air Permit Number 5955A, SC 4., FOP O-01257, STC 13, and THSC, §382.085(b), by failing to maintain sulfur production levels; 30 TAC §101.20(2) and §122.143(4), FOP O-01257, STC 1.A. and 10.E., 40 CFR §61.342(f)(2), and THSC, §382.085(b), by failing to include a notice with off-site benzene waste shipments; 30 TAC §§101.20(2), 113.340, and 122.143(4), FOP O-01257, STC 1.A. and 10., 40 CFR §61.356(a), (b)(1) and (2), and §63.654(a), and THSC, §382.085(b), by failing to identify each benzene containing waste stream; 30 TAC §§101.20(2), 113.340, and 122.143(4), FOP O-01257, STC 1.A., 40 CFR §61.349(f) and §63.647(a), and THSC, §382.085(b), by failing to conduct vent system visual inspections; 30 TAC §113.340 and §122.143(4), FOP O-01257, STC 1.A., 40 CFR §§63.120(a)(3)(ii), 63.646(a), and 63.646(g), and THSC, §382.085(b), by failing to conduct yearly internal floating roof tank seal inspections; 30 TAC §101.20(1) and (2) and §122.143(4), FOP O-01257, STC 1.A., 40 CFR §60.113b(a)(2) and §61.351(a)(1), and THSC, §382.085(b), by failing to timely perform visual tank seal inspections on tanks in benzene service; 30 TAC §113.340 and §122.143(4), FOP O-01257, STC 1.A., 40 CFR §63.120(a)(2)(i) and (a)(3)(iii) and §63.646(a), and THSC, §382.085(b), by failing to perform timely visual tank inspection of primary and secondary

seals; 30 TAC §101.20(1) and §122.143(4), FOP O-01257, STC 1.A., 40 CFR §60.105(a)(4), and THSC, §382.085(b), by failing to install an instrument to continuously monitor and record hydrogen sulfide on fuel gas combustion devices; 30 TAC §101.20(1) and §122.143(4), FOP O-01257, STC 6.F., 40 CFR §60.13(d)(1) and §60.105(a)(4), and THSC, §382.085(b), by failing to perform daily hydrogen sulfide calculations; 30 TAC §§101.20(1), 113.340, and 122.143(4), FOP O-01257, STC 1.A., 40 CFR §60.482-6(a)(1) and §63.648(a), and THSC, §382.085(b), by failing to equip open-ended lines or valves with a cap, blind flange, plug, or a second valve; 30 TAC §§101.20(1), 113.340, and 122.143(4), FOP O-1257, STC 1.A., 40 CFR §60.486(c)(1) and (7) and §63.648(a), and THSC, §382.085(b), by failing to provide complete information on a leak detection and repair report; 30 TAC §101.20(1) and §122.143(4), FOP O-1257, STC 1.A., 40 CFR §§60.7(c)(2), 60.105(e)(3)(ii), and 60.107(f), and THSC, §382.085(b), by failing to certify the accuracy and completeness of quarterly continuous emissions monitoring systems reports; 30 TAC §113.340 and §122.143(4), FOP O-01257, STC 1.A., 40 CFR §63.654(g) and (g)(5)(iii), and THSC, §382.085(b), by failing to submit a timely and complete maximum achievable control technology (MACT) CC report; 30 TAC §113.340 and §122.143(4), FOP O-01257, STC 1.A., 40 CFR §63.10(d) and §63.1575(b)(2), and THSC, §382.085(b), by failing to timely submit a MACT UUU report; 30 TAC §116.115(c) and §122.143(4), NSR Air Permit Number 4902, SC 7, FOP O-01257, STC 13., and THSC, §382.085(b), by failing to conduct monthly carbon monoxide sampling; 30 TAC §113.340 and §122.143(4), FOP O-1257, STC 1.A., 40 CFR §63.120(a)(5) and §63.646(a), and THSC, §382.085(b), by failing to notify the TCEQ at least 30 days prior to refilling storage tanks in hazardous air pollutant (HAP) service; 30 TAC §113.340 and §122.143(4), FOP O-01257, STC 1.A., 40 CFR §63.120(b)(1)(iii) and §63.646(a), and THSC, §382.085(b), by failing to perform timely tank seal gap measurements on tanks in HAP service; 30 TAC §101.20(1) and §122.143(4), FOP O-01257, STC 1.A., 40 CFR §60.113b(b)(1)(ii), and THSC, §382.085(b), by failing to perform timely tank seal gap measurements on a tank in volatile organic compound (VOC) service; 30 TAC §§101.20(2), 113.340, and 122.143(4), FOP O-01257, STC 1.A., 40 CFR §61.356(f)(1) and §63.654(a), and THSC, §382.085(b), by failing to maintain a signed and dated flare certification; and 30 TAC §113.340 and §122.143(4), FOP O-1257, STC 1.A., 40 CFR §61.346(b)(2)(ii)(A) and §63.654(a), and THSC, §382.085(b), by failing to install a flow indicator; PENALTY: \$288,395; Supplemental Environmental Project (SEP) offset amount of \$92,358 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Household Hazardous Waste Clean-Up; Supplemental Environmental Project (SEP) offset amount of \$23,000 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(11) COMPANY: City of Electra; DOCKET NUMBER: 2005-0795-MWD-E; IDENTIFIER: RN101212611; LOCATION: Electra, Wichita County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10020001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and the Code, §26.121(a), by failing to meet the five-day biochemical oxygen demand, TSS, and pH effluent limitations; PENALTY: \$8,360; Supplemental Environmental Project (SEP) offset amount of \$6,688 applied to the replacement of broken or substandard wastewater collection system lines for four low to moderate income households; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(12) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2006-1442-AIR-E; IDENTIFIER: RN102501020; LOCATION: Mont Belvieu, Chambers County, Texas; TYPE OF FACILITY: polyethylene plant; RULE VIOLATED: 30 TAC §111.205(a) and §122.143(4), FOP Number O-02276, SC 3F(i), and THSC, §382.085(b), by failing to provide annual written notification of intent and to provide a phone or electronic facsimile notice; 30 TAC §§101.20(1), 116.115(c), and 122.143(4), NSR Permit Number 4831, SC 6A (effective May 12, 2005, now 5A), FOP Number O-02276, SC 9, 40 CFR §60.18(c)(4)(i), and THSC, §382.085(b), by failing to limit the flare exit velocity; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 4831, SC 6D (effective May 12, 2005, now 5D), FOP Number O-02276, SC 9, and THSC, §382.085(b), by failing to limit analyzer down time to 5% of flare operating hours; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 4831, SC 6D (effective May 30, 2003), FOP Number O-02276, SC 9, and THSC, §382.085(b), by operating the low density polyethylene flare while the analyzer was out of service; 30 TAC §§101.20(1), 115.781(d)(1), and 122.143(4), 40 CFR §60.563(d)(2), FOP Number O-02276, SC 1A, and THSC, §382.085(b), by failing to monthly monitor 37 out of 151 new car-seals on bypass lines; 30 TAC §§115.352(2), 115.782(b)(2), and 122.143(4), FOP Number O-02276, SC 1A, and THSC, §382.085(b), by failing to make a first attempt to repair a valve in ethylene service; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 4831, SC 1, FOP Number O-02276, SC 9, and THSC, §382.085(b), by failing to comply with the annual maximum allowable emissions rate (MAER) for VOC; 30 TAC §§101.20(1), 116.115(c), and 122.143(4), NSR Permit Number 4831, SC 6A (now 5A), FOP Number O-02276, SC 9, 40 CFR §60.18(c)(3)(ii), and THSC, §382.085(b), by failing to maintain the minimum heating value of 300 British thermal units per standard cubic foot; 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit before constructing and operating five catalyst loading stations; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 4831, SC 1, FOP Number O-02276, SC 9, and THSC, §382.085(b), by failing to comply with the E2 granular feed bin filter annual emission rate of 0.01 tons per year; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 4831, SC 3, FOP Number O-02276, SC 9, and THSC, §382.085(b), by exceeding the hourly MAER of 274 pounds of VOC to a million pounds of granular product; 30 TAC §115.244(1) and THSC, §382.085(b), by failing to conduct daily inspections of the Stage II vapor recovery system; 30 TAC §§101.20(1), 115.783(1)(B), and 122.143(4), 40 CFR §60.562-1(e), FOP Number O-02274, SC 1A, and THSC, §382.085(b), by failing to install two car-seals to valves in a closed-vent system; and 30 TAC §122.145(2)(A), FOP Number O-02276, General Terms and Conditions, and THSC, §382.085(b), by failing to submit a complete deviation report; PENALTY: \$92,138; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: David Gonzales; DOCKET NUMBER: 2006-2242-OSI-E; IDENTIFIER: RN105081517; LOCATION: Hereford, Deaf Smith County, Texas; TYPE OF FACILITY: on-site sewage facility installing business; RULE VIOLATED: 30 TAC §285.61(4) and THSC, §366.051(c), by failing to obtain documentation that the owners or owners' agent had acquired an authorization to construct from the TCEQ prior to altering an on-site sewage facility; PENALTY: \$500; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(14) COMPANY: Hill Country Arts Foundation; DOCKET NUMBER: 2006-1993-PWS-E; IDENTIFIER: RN101275485; LOCATION: Kerr County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i), (c)(2)(F), and (c)(3)(A)(ii),

and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to perform routine bacteriological monitoring and failing to provide public notice, by failing to collect and submit at least five routine samples the month following a total coliform-positive result and failed to provide public notice of failure to collect appropriate number of routine samples, and by failing to collect and submit repeat samples following a coliform-positive sample and failing to provide public notice; PENALTY: \$2,840; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 7233-4480, (210) 490-3096.

(15) COMPANY: INVISTA S.a.r.l., LLC; DOCKET NUMBER: 2006-1740-AIR-E; IDENTIFIER: RN104392626; LOCATION: Orange County, Texas; TYPE OF FACILITY: nylon production plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A) and THSC, §382.085(b), by failing to report all instances of deviations; 30 TAC §117.419(b) and §122.143(4), FOP Number O-01350, General Terms and Conditions, and THSC, §382.085(b), by failing to furnish the executive director copies of continuous emission monitoring system (CEMS) performance evaluations; 30 TAC §101.20(1) and §122.143(4), FOP Number O-01350, Special Terms and Conditions Number 4A, and THSC, §382.085(b), by failing to document the daily CEMS calibrations for nitrogen oxides; 30 TAC §101.20(1) and §122.143(4), FOP Number O-01350, General Terms and Conditions, and THSC, §382.085(b), by failing to furnish the administrator within 60 days of a performance evaluation two copies of a written report of the results of the performance evaluation; 30 TAC §116.115(c), Permit Number 1302, SC Number 5E, Permit Number 1303, SC Number 7E, Permit Number 1790, SC Number 1E, and THSC, §382.085(b), by failing to install a cap, blind flange, plug, or a second valve on equipment in VOC service; 30 TAC §116.115(c), Permit Number 1303, Special Condition Number 2, and THSC, §382.085(b), by failing to operate within the maximum ammonia concentrations in the scrubber solution; 30 TAC §116.115(c), Permit Number 1303, SC Numbers 3 and 9E, and THSC, §382.085(b), by failing to sample and analyze the ammonia concentration and by failing to document the performance of each ammonia audio, olfactory, and visual inspection in the operator's log; 30 TAC §122.143(4), FOP Number O-02075, Special Terms and Conditions Number 4A, and THSC, §382.085(b), by failing to conduct opacity observations; 30 TAC §116.115(c), Permit Number 1468, Special Condition Number 7B, and THSC, §382.085(b), by failing to check the zero and the span on a daily basis on each CEMS analyzer; 30 TAC §117.319(a)(1) and §117.419(a)(1) and THSC, §382.085(b), by failing to provide verbal notification of the date of a CEMS performance evaluation; 30 TAC §116.115(b)(2)(F), Permit Number 1790, General Condition Number 8, and THSC, §382.085(b), by failing to maintain an emission rate below the maximum allowable emission limit; 30 TAC §106.454(1)(E) and §115.412(1)(C) and THSC, §382.085(b), by failing to post a permanent and conspicuous label summarizing the operating requirements to minimize emissions; 30 TAC §106.454(1)(A) and THSC, §382.085(b), by failing to keep records of the total solvent makeup; 30 TAC §122.143(4), FOP Number O-01868, Special Terms and Conditions Number 3A(iii), and THSC, §382.085(b), by failing to conduct annual opacity observations of stationary vents; 30 TAC §117.313(a) and THSC, §382.085(b), by failing to monitor nitrogen oxide emissions; 30 TAC §122.143(4) and §122.145(1)(C), FOP Number O-01868, General Terms and Conditions, and THSC, §382.085(b), by failing to submit a semianual report; 30 TAC §117.319(a)(2) and §122.143(4), FOP Number O-01868, Special Terms and Conditions Number 1A, and THSC, §382.085(b), by failing to submit a copy of the CEMS performance evaluation; 30 TAC §111.111(a)(4)(A)(ii) and THSC, §382.085(b), by failing to record a minimum of 98% of the daily flare observations; 30 TAC §115.216(3)(A) and THSC, §382.085(b), by failing to maintain a complete daily loading/unloading record; 30 TAC §113.3050

and THSC, §382.085(b), by failing to monitor pumps monthly; 30 TAC §§113.3050, 115.352(2), and 116.115(c), Permit Number 1302, Special Condition Number 5H, and THSC, §382.085(b), by failing to repair two fugitive components; 30 TAC §116.115(c), Permit Number 1303, Special Condition Number 9E, and THSC, §382.085(b), by failing to properly document ammonia nitrogen leaks; 30 TAC §116.115(b)(2)(F) and (c), Permit Number 1302, SC Number 1, and THSC, §382.085(b), by failing to maintain an emission rate below the maximum allowable emission limit of 24 pounds per hour of VOCs; PENALTY: \$120,666; Supplemental Environmental Project (SEP) offset amount of \$48,266 applied to Jefferson County-Southeast Texas Regional Air Monitoring Network; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Tuan Nguyen dba Key Dry Cleaner; DOCKET NUMBER: 2006-1358-DCL-E; IDENTIFIER: RN104952049; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$889; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Love's Travel Stops & Country Stores, Inc. dba Love's Country Store 214; DOCKET NUMBER: 2006-2041-AIR-E; IDENTIFIER: RN102879442; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to comply with the minimum 2.7% by weight, oxygenated fuel requirement for motor vehicle fuel; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(18) COMPANY: Tim O'Brien dba O'Brien's Restaurant; DOCKET NUMBER: 2007-0049-PWS-E; IDENTIFIER: RN104189303; LOCATION: Bergheim, Kendall County, Texas; TYPE OF FACILITY: restaurant with public water supply; RULE VIOLATED: 30 TAC §290.39(h)(1) and §290.46(a), by failing to submit water system plans and specifications prepared by a licensed, professional engineer; PENALTY: \$726; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 77703-1892, (210) 490-3096.

(19) COMPANY: City of Panorama Village; DOCKET NUMBER: 2006-2057-MWD-E; IDENTIFIER: RN102178183; LOCATION: Montgomery County, Texas; TYPE OF FACILITY: water reclamation plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11097001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: City of Rio Grande City; DOCKET NUMBER: 2007-0171-WQ-E; IDENTIFIER: RN102777661; LOCATION: Starr County, Texas; TYPE OF FACILITY: stormwater; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247.

(21) COMPANY: Sabine Mud-Logging, Inc.; DOCKET NUMBER: 2006-1737-MLM-E; IDENTIFIER: RN105005607; LOCATION: Carthage, Panola County, Texas; TYPE OF FACILITY: unauthorized

landfill; RULE VIOLATED: 30 TAC §330.15, by failing to properly dispose of municipal solid waste; 30 TAC §111.201 and THSC, §382.085(b), by failing to prevent unauthorized outdoor burning; and 30 TAC §328.23(a), by failing to properly collect and manage used oil filters; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(22) COMPANY: City of Stratford; DOCKET NUMBER: 2006-2023-MSW-E; IDENTIFIER: RN102328374; LOCATION: Stratford, Sherman County, Texas; TYPE OF FACILITY: type V municipal solid waste (MSW) transfer station; RULE VIOLATED: 30 TAC §330.15(c), by failing to dispose of MSW at an authorized facility; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(23) COMPANY: Kim Oanh T. Nguyen dba US DC Alterations and Shoe Repair; DOCKET NUMBER: 2006-1618-DCL-E; IDENTIFIER: RN104992151; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Tuan Ngoc Do dba Xpress Mart; DOCKET NUMBER: 2006-1912-PST-E; IDENTIFIER: RN102236551; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all underground storage tanks (USTs) are monitored in a manner which will detect a release; 30 TAC §334.10(b), by failing to have the required UST records maintained, readily accessible, and available for inspection; and 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition and that such devices are inspected and serviced in accordance with the manufacturers' specifications; PENALTY: \$4,815; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200700624

Mary Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 20, 2007



Enforcement Orders

An agreed order was entered regarding Salwa, Inc. dba Cypress Plaza 1, Docket No. 2002-1013-PST-E on February 8, 2007 assessing \$14,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shannon Strong, Staff Attorney at (512) 239-0972, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Liaquat Hussain dba Huffman Gas & Grocery, Docket No. 2003-0933-PST-E on February 8, 2007 assessing \$3,210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney at (512) 239-0078, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Scott Hewitt dba Scott Hewitt Broiler Farm, Docket No. 2004-0459-AIR-E on February 8, 2007 assessing \$6,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding P & S Stone, Inc. dba P & S Stone TD Williams, Docket No. 2004-0937-WQ-E on February 8, 2007 assessing \$6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deanna Sigman, Staff Attorney at (512) 239-0619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William R. Leo dba Leo's Food Mart 3, Docket No. 2004-1336-PST-E on February 8, 2007 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shannon Strong, Staff Attorney at (512) 239-0972, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Continental Land Owners Association, Inc., Docket No. 2005-0301-PWS-E on February 8, 2007 assessing \$5,038 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mickey Koonsman dba Tex Hess 3 Way Store and Karen Koonsman dba Tex Hess 3 Way Store, Docket No. 2005-0809-PST-E on February 8, 2007 assessing \$6,840 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jubilant Services, Inc. dba RJN Food Mart, Docket No. 2005-1849-PST-E on February 8, 2007 assessing \$9,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney at (512) 239-0078, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brazos Bend Home & Ranch, Inc., Docket No. 2005-2085-PWS-E on February 8, 2007 assessing \$3,823 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deanna Sigman, Staff Attorney at (512) 239-0619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Goodyear Tire & Rubber Company, Docket No. 2006-0108-AIR-E on February 8, 2007 assessing \$4,075 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shana Horton, Staff Attorney at (512) 239-1088, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Dapino Watters dba Krystal Mart, Docket No. 2006-0214-PST-E on February 8, 2007 assessing \$12,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2006-0340-AIR-E on February 8, 2007 assessing \$64,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Adventure Camp, Inc. dba Y.O. Adventure Camp, Docket No. 2006-0520-PWS-E on February 8, 2007 assessing \$8,798 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deanna Sigman, Staff Attorney at (512) 239-0619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eloina G. Torres dba Royal Cleaners, Docket No. 2006-0649-DCL-E on February 8, 2007 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pasadena Refining System, Inc., Docket No. 2006-0664-AIR-E on February 8, 2007 assessing \$14,364 in administrative penalties with \$2,873 deferred.

Information concerning any aspect of this order may be obtained by contacting Sherronda Martin, Enforcement Coordinator at (713) 767-3680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amarillo Village Cleaners, Inc., Docket No. 2006-0694-DCL-E on February 8, 2007 assessing \$1,067 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shana Horton, Staff Attorney at (512) 239-1088, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paul Mauricio & Sons, Inc. dba Snow White Cleaners No. 15, dba Snow White Cleaners No. 27, dba Zip Cleaners No. 6, dba Snow White Cleaners No. 24, dba Snow White Cleaners No. 1, dba Snow White Cleaners No. 12, dba Sudden Cleaners No. 10, dba Sudden Cleaners No. 1, dba Zip Cleaners No. 1, dba Snow White Cleaners No. 9, and dba Snow White Cleaners No. 23, Docket No. 2006-0716-DCL-E on February 8, 2007 assessing \$8,745 in administrative penalties with \$1,749 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator at (512)

239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc. dba Aqua Texas, Inc., Docket No. 2006-0775-MWD-E on February 8, 2007 assessing \$24,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Citgo Products Pipeline Company, Docket No. 2006-0803-AIR-E on February 8, 2007 assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kahler Homes Ltd., Docket No. 2006-0810-WQ-E on February 8, 2007 assessing \$1,350 in administrative penalties with \$270 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Crockett, Docket No. 2006-0864-MWD-E on February 8, 2007 assessing \$5,310 in administrative penalties with \$1,062 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RLY Cleaners, L.L.C. dba Metro Cleaners, Docket No. 2006-0868-DCL-E on February 8, 2007 assessing \$474 in administrative penalties with \$96 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hoa Bui Enterprises, Inc. dba Mpress Cleaners, Docket No. 2006-0869-DCL-E on February 8, 2007 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stanley Huber dba Huber Gardens Estates, Docket No. 2006-0879-PWS-E on February 8, 2007 assessing \$1,488 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Asifa Shoaib dba Tip Top Cleaners, Docket No. 2006-0939-DCL-E on February 8, 2007 assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jose Valenzuela dba The New Lone Star Cleaners, Docket No. 2006-0963-DCL-E on February 8, 2007 assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Anthony Forest Products Company, Docket No. 2006-0976-AIR-E on February 8, 2007 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Orange Crush Recyclers, Ltd., Docket No. 2006-0977-AIR-E on February 8, 2007 assessing \$16,720 in administrative penalties with \$3,344 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Kemp, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Peter Xac dba Lucky Store, Docket No. 2006-1002-PST-E on February 8, 2007 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bolton Brite Way Cleaners, Inc., Docket No. 2006-1006-DCL-E on February 8, 2007 assessing \$12,031 in administrative penalties with \$2,409 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Teresa Pate dba Matties Place, Docket No. 2006-1025-PWS-E on February 8, 2007 assessing \$2,010 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Randy Bixby dba Out on a Limb, Inc., Docket No. 2006-1034-AIR-E on February 8, 2007 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Rhodes, Enforcement Coordinator at (512) 239-2879, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kim A. Johnson dba Dry Clean Super Center, Docket No. 2006-1055-DCL-E on February 8, 2007 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Laredo Regional Medical Center, L.P. dba Doctors Hospital of Laredo, Docket No. 2006-1059-PST-E on February 8, 2007 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lavelle M. Jeane dba Santa Fe Cleaners, Docket No. 2006-1110-DCL-E on February 8, 2007 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shenaz A. Hirani dba Whitex Cleaners, Docket No. 2006-1135-DCL-E on February 8, 2007 assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carlos Castillo dba Olivas Paint & Body Shop, Docket No. 2006-1142-AIR-E on February 8, 2007 assessing \$1,100 in administrative penalties with \$220 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paul Allbright dba Bent Tree Cleaners, Docket No. 2006-1156-DCL-E on February 8, 2007 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brian Le dba 1.25 Brian Cleaners, Docket No. 2006-1172-DCL-E on February 8, 2007 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Young Man Rhee dba A1 Dry Cleaners, Docket No. 2006-1207-DCL-E on February 8, 2007 assessing \$1,778 in administrative penalties with \$356 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Racetrac Petroleum, Inc. dba Racetrac 501, Docket No. 2006-1218-PST-E on February 8, 2007 assessing \$7,875 in administrative penalties with \$1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises, LLC, Docket No. 2006-1259-AIR-E on February 8, 2007 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jims Inc. dba Snow White Cleaners, Docket No. 2006-1268-DCL-E on February 8, 2007 assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chung K Yi dba Uptown Cleaners, Docket No. 2006-1275-DCL-E on February 8, 2007 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (254) 761-3038, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wan Tae Lim dba City Cleaners, Docket No. 2006-1282-DCL-E on February 8, 2007 assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bang Tieu dba Unik Cleaners and Alterations, Docket No. 2006-1323-DCL-E on February 8, 2007 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THS Properties, L.L.C. and Pineview Woods, L.P., Docket No. 2006-1330-WQ-E on February 8, 2007 assessing \$5,600 in administrative penalties with \$1,120 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oanh Hoang Ngo dba Sharpway Cleaners, Docket No. 2006-1342-DCL-E on February 8, 2007 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Alison Echlin, Enforcement Coordinator at (512) 239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tom Pham dba T&C Specialty Cleaners, Docket No. 2006-1373-DCL-E on February 8, 2007 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Alison Echlin, Enforcement Coordinator at (512) 239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding George's Cleaners, Inc. dba Community Cleaners, Docket No. 2006-1404-DCL-E on February 8, 2007 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VNP, Inc. dba Greg's Cleaners, Docket No. 2006-1419-DCL-E on February 8, 2007 assessing \$770 in administrative penalties with \$154 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Expert Cleaners, Inc. dba Pro Cleaners, Docket No. 2006-1456-DCL-E on February 8, 2007 assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kyong Allin dba Sassy Cleaners, Docket No. 2006-1481-DCL-E on February 8, 2007 assessing \$117 in administrative penalties with \$23 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joy International Corporation dba Dry Clean 150, Docket No. 2006-1496-DCL-E on February 8, 2007 assessing \$932 in administrative penalties with \$187 deferred.

Information concerning any aspect of this order may be obtained by contacting Alison Echlin, Enforcement Coordinator at (512) 239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sun Kun Ziegler dba Heights Cleaners, Docket No. 2006-1500-DCL-E on February 8, 2007 assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Godeaux, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Maria Rosales dba Salvatex Used Auto Parts, Docket No. 2006-1531-WQ-E on February 8, 2007 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding K & R Fuel Centers, Inc. dba Travel Plaza, Docket No. 2006-1538-PST-E on February 8, 2007 assessing \$1,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Camelot Custom Homes, Inc., Docket No. 2006-1570-WQ-E on February 8, 2007 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Masters Resources, LLC, Docket No. 2006-1575-AIR-E on February 8, 2007 assessing \$4,125 in administrative penalties with \$825 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ram Leather Care of San Antonio, Inc. dba Ram Leather Care, Docket No. 2006-1603-DCL-E on February 8, 2007 assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Custer Cleaners LLC dba Dry Clean City, Docket No. 2006-1636-DCL-E on February 8, 2007 assessing \$311 in administrative penalties with \$62 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C & D Yun Corporation dba Sky Town & Country Cleaners, Docket No. 2006-1639-DCL-E on February 8, 2007 assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nizarali Ali Bhai Dhuka dba Texas A 1 Cleaners, Docket No. 2006-1658-DCL-E on February 8, 2007 assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trishla, Inc. dba A-1 Dry Cleaners, Docket No. 2006-1672-DCL-E on February 8, 2007 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Gentek Investments, Inc. dba Rowdy's, Docket No. 2006-1754-PST-E on February 8, 2007 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Best Texan Inc. dba 105 Food Mart, Docket No. 2006-1895-PST-E on February 8, 2007 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding North Texas Super Save LP dba Burrus IGA Supermarket, Docket No. 2006-2089-PST-E on February 8, 2007 assessing \$1,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Mohammad Omair dba JRS Quick Stop, Docket No. 2006-2160-PST-E on February 8, 2007 assessing \$1,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200700684

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 21, 2007



Notice of Availability and Request for Comments

AGENCIES: Texas Commission on Environmental Quality (TCEQ), Texas Parks and Wildlife Department (TPWD), Texas General Land Office (GLO), United States Department of the Interior (DOI), and National Oceanic and Atmospheric Administration (NOAA) (collectively the Trustees).

ACTION: Notice of availability of a proposed Settlement Agreement and Draft Restoration Plan and Environmental Assessment for ecological injuries and service losses associated with the Palmer Barge Superfund Site in Jefferson County, Texas, the Federal Consistency Determination for this Plan under the Texas Coastal Management Program, and of a 30-day period for public comment on the Settlement Agreement, the Draft Restoration Plan and Environmental Assessment, and the Federal Consistency Determination beginning March 2, 2007.

SUMMARY: Notice is hereby given that a proposed Settlement Agreement in resolution of the Natural Resource Trustees' claim for natural resource damages (Agreement) associated with the Palmer Barge Superfund Site, the "Draft Restoration Plan and Environmental Assessment for the Palmer Barge Waste Site, Port Arthur, Jefferson County, Texas" (Draft RP/EA), and the Federal Consistency Determination with the Texas Coastal Management Program (CMP) related to the activities outlined in the Draft RP/EA are available for public review and comment.

These documents have been prepared by the state and federal Natural Resource Trustees to address natural resource injuries and resource service losses of an ecological nature attributable to releases of hazardous substances from the Palmer Barge Waste Site (the Site) located in Port Arthur, Jefferson County, Texas. The Natural Resource Trustees have reached a proposed agreement with E.I. du Pont de Nemours and Company, Texaco Inc., Ashland Inc., and Kirby Inland Marine to resolve their liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for damages to natural resources resulting from releases of hazardous substances from the Site. The Draft RP/EA presents the Trustees' assessment of the natural resource injuries and service losses attributable to the Site and their proposed plan to compensate for those losses by restoring ecological resources and services. The Trustees will consider input received during the public comment period before finalizing the RP/EA.

The Federal Consistency Determination for this Draft RP/EA outlines the basis for NOAA's and DOI's determinations that the restoration actions described in the Draft RP/EA are consistent to the maximum extent possible, and will be undertaken in a manner consistent with, the applicable policies of the CMP. Under federal law, actions and activities undertaken by a federal agency which affect the Texas coastal zone must be consistent with the goals and policies of the CMP identified in 31 Texas Administrative Code (TAC) Chapter 501. Under 31 TAC §506.2(c), a determination of consistency with the CMP must be made by the federal Trustees for natural resource damage assessment and restoration plans that are the product of a joint cooperative natural resource damage assessment by state and federal Trustees. Review of the Federal Consistency Determination is delegated to the state Trustee agencies (TCEQ, TPWD and the GLO). The state Trustees will consider all comments received during the public comment period in their evaluation of the Federal Consistency Determination for the Draft RP/EA and will, depending on the comments received, submit a letter of concurrence to the federal Trustees.

To receive a copy of the proposed Agreement, Draft RP/EA, and/or the Federal Consistency Determination with the CMP, interested members of the public are invited to contact Richard Seiler at the Texas Commission on Environmental Quality, Remediation Division, MC 225, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2523 (phone) or (512) 239-4814 (fax).

DATES: Comments must be submitted in writing on or before March 31, 2007, to Richard Seiler of the TCEQ at the address listed in the previous paragraph. The Trustees will consider all written comments prior to finalizing the RP/EA and completing their review of the Federal Consistency Determination.

SUPPLEMENTARY INFORMATION: The Site consists of approximately 17 acres located 4.5 miles northeast of the city of Port Arthur in Jefferson County along Ferry (or Old Yacht Club) Road on Pleasure Islet, approximately one-half mile southwest of the confluence of the Neches River and the Sabine-Neches Ship Channel. The Site is bordered by the State Marine Superfund site to the south, Sabine Lake to the east, Old Yacht Club Road to the West, and vacant property to the north.

The Site was originally used as a municipal landfill for the City of Port Arthur, which operated the landfill from 1956 until the mid-1980s. In 1982, the city of Port Arthur sold the property and it was subsequently used as a marine barge cleaning operation (Palmer Barge Marine) from 1982 until 1997. Operations performed at the Site included cleaning, degassing, maintenance, and inspection of barges and marine equipment. A flare was located on site to burn excess gasses and liquids produced during the facility operations, in addition to multiple above-ground storage tanks. In July 1997, Palmer Barge Line was purchased

and operations on the property ceased. Currently the Site is owned by a private individual who is redeveloping it as an industrial property.

In 1996, the TCEQ (then known as the Texas Natural Resource Conservation Commission, or TNRCC) conducted a multi-media inspection of the Site which identified large areas of contamination on Site soils. These findings triggered further investigation by both the U.S. Environmental Protection Agency (EPA) and TCEQ. In 1996, an expanded site inspection (ESI) was performed for the purpose of evaluating the nature and extent of on-site and off-site contamination and evaluating the environmental fate of the contaminants. This evaluation indicated the presence of both organic and inorganic contaminants in Site soils and in the shallow near-shore sediments of Sabine Lake. Semi-volatile contaminants of concern identified at the Site include acenaphthylene, anthracene, benzo(a)pyrene, chrysene, and fluoranthene. There were also numerous pesticides and polychlorinated biphenyls detected in the Site soil samples. Elevated levels of inorganic contaminants included chromium, copper, lead, and zinc.

The Site was placed on the National Priorities List (Superfund) on July 27, 2000, and the EPA authorized an emergency removal action for reduction of on-site contamination in August 2000. Removal activities included removal of wastes, wastewater treatment, and sludge stabilization. A Remedial Investigation (RI) was performed at the Site pursuant to an Administrative Order on Consent signed by the EPA and the Settling Parties in 2002, and based on information developed in the RI, a Record of Decision (ROD) for the Site was signed on September 30, 2005. The ROD requires the excavation of approximately 1,204 cubic yards of soil which exceeded risk-based levels, backfilling of excavated areas with clean soil, and off-site disposal of excavated soils at a permitted disposal facility. Existing aboveground storage tanks will be demolished and removed. As planned, and when implemented, the remedy selected to address the contamination at the Site is expected to protect natural resources in the vicinity of the Site from further or future injury.

The Trustees are designated natural resource trustees under CERCLA, §107(f), Federal Water Pollution and Control Act, §311, 33 United States Code, §1321, and other applicable federal or state laws, including Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 Code of Federal Regulations §§300.600 - 300.615. The Trustees are authorized to act on behalf of the public under these authorities to protect and restore natural resources injured or lost as a result of discharges or releases of hazardous substances.

Paralleling the remedial investigations at the Site, the Trustees worked cooperatively with E.I. du Pont de Nemours and Company, Texaco Inc., Ashland Inc, and Kirby Inland Marine, L.P., to evaluate natural resource injuries and ecological service losses resulting from releases of hazardous substances to areas at or adjacent to the Site. The Trustees' evaluation focused on natural resource injuries or service losses of an ecological nature caused by hazardous substances at the Site based on known contamination and anticipated remedial actions. As a result of this assessment, the Trustees determined that hazardous substances (including semi-volatile organic compounds, polycyclic aromatic hydrocarbons, polychlorinated biphenyls, pesticides, and metals) were available in the sediments and injury to ecological habitat of approximately 7.55 acres had occurred.

The Draft RP/EA identifies the information and methods used to define the natural resource injuries and losses of an ecological nature, including the scale of restoration actions, and identifies the restoration actions which are preferred to restore, replace, or acquire resources or services equivalent to those lost.

For further information, contact Richard Seiler at (512) 239-2523, e-mail: rseiler@tceq.state.tx.us.

TRD-200700688

Mary Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 21, 2007



Notice of Deletion of the PolyCycle Jacksonville Site from the State Superfund Registry

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this notice of deletion of the PolyCycle Industries Inc. state Superfund site located in Jacksonville, Cherokee County, Texas, from its proposed-for-listing status on the state registry. The state registry lists the contaminated sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The Site was originally proposed for listing on the state registry in the December 5, 2003, edition of the *Texas Register* (28 TexReg 11012). The Site, including all land, structures, appurtenances, and other improvements, is approximately seven acres located at 2505 South Jackson Street, Jacksonville, Cherokee County, Texas. In addition, the Site included any areas where hazardous substances came to be located as a result, either directly or indirectly, of releases of hazardous substances from the Site.

PolyCycle Industries Inc. (PCI) recycled lead from lead acid batteries and casings at the Site from 1978 to 1983. Sulfuric acid was drained from the batteries and lead plates were removed. The sulfuric acid was sent to a hazardous waste disposal firm and the lead plates were sold to a smelter. The lead battery casings were ground and washed in four unlined surface impoundments to remove lead and lead sulfate. The chips were skimmed from the surface impoundments and sold to plastic recyclers. The lead and lead sulfate sediments on the bottoms of the impoundments were sold to a lead smelter. As a result of these operations the Site soil was contaminated with lead. At a public meeting on January 15, 2004, the TCEQ proposed to clean up the site to a commercial/industrial clean up level.

The TCEQ conducted a Remedial Investigation (RI), during which extensive soil and groundwater samples were analyzed. Soil analysis showed three locations where lead concentrations were above the Protective Concentration Level (PCL) for the commercial/industrial PCL of 1,600 parts per million. A groundwater sample with a beryllium concentration above the PCL of 4 parts per billion was also found. To prevent future migration of contaminate to groundwater the TCEQ conducted a removal action at the Site. The three Site locations where lead concentrations were above the PCL and the area where beryllium in the groundwater was above the PCL, were excavated and the waste materials were disposed of in permitted landfills. The Site was cleaned up to industrial/commercial standards.

In accordance with Title 30 of the Texas Administrative Code (TAC), §335.344(b), the commission held a public meeting to receive comments regarding the intended deletion of the Site on January 25, 2007, at the Jacksonville Public Library. The complete public file, including a transcript of the public meeting, may be viewed during regular business hours at the commission's Records Management Center, Records Customer Service, Building E, First Floor, 12100 Park 35 Circle, MC 199, Austin, Texas 78753, telephone numbers (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information.

Pursuant to Title 30 of the Texas Administrative Code (TAC), §335.344(c), the ED has determined that due to the removal actions

that have been performed, the Site no longer presents an imminent and substantial endangerment to public health and safety or the environment. In accordance with Texas Health and Safety Code, §361.188(d), a notice will be filed in the real property records of Cherokee County, Texas, stating that the Site has been deleted from the state registry.

All inquiries regarding the deletion of the Site should be directed to Mr. Bruce McAnally, Community Relations, telephone numbers (800) 633-9363 or (512) 239-2141.

TRD-200700622

Mary Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 20, 2007



Notice of District Petition

Notices issued February 15, 2007.

Texas Commission on Environmental Quality (TCEQ) Internal Control No. 01292007-D03; GR-M1, Ltd. (Petitioner) filed a petition for creation of Brazoria County Municipal Utility District No. 57 (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code (TWC); 30 Texas Administrative Code (TAC) Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 447.47 acres located within Brazoria County, Texas; and (4) the proposed District is within the corporate boundaries of the City of Manvel, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2007-R-03, effective January 8, 2007, the City of Manvel, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$17,040,000.

TCEQ Internal Control No. 01292007-D04; GR-M1, Ltd. (Petitioner) filed a petition for creation of Brazoria County Municipal Utility District No. 58 (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the TWC; 30 TAC Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 343.22 acres located within Brazoria County, Texas; and (4) the proposed District is within the corporate boundaries of the City of Manvel, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2007-R-04, effective January 8, 2007, the City of Manvel, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$17,000,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publi-

cation of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing;" (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided below.

The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200700683

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 21, 2007



Notice of Meeting on April 5, 2007, in Nacogdoches, Texas Concerning the Woodward Industries, Inc. Site

The purpose of the meeting is to obtain public input and information concerning proposal of the former Woodward Industries, Inc. site to the state registry of Superfund sites, the identification of potentially responsible parties, and to help determine the appropriate land use of the property.

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Health and Safety Code, Chapter 361, as amended (the Act), to annually publish a state registry that identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8265-8266).

Pursuant to §361.184(a) of the Act, the commission must publish a notice of intent to list a facility on the state registry of state Superfund sites in the *Texas Register* and in a newspaper of general circulation in the county in which the Woodward Industries, Inc. site is located. With this publication, the commission hereby gives notice of a site that the executive director has determined is eligible for listing, and which the executive director proposes to list on the state registry. Determination of appropriate land use may impact the remedial investigation and remedial action for the site. The TCEQ is gathering information on the use of the property as the proposed land use designation and associated clean-up level will be based on the existing land use of the property,

as is prescribed in the Texas Risk Reduction Program rule at 30 Texas Administrative Code (TAC) §350.53.

This publication also specifies the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. This notice of intent to list this site was also scheduled to be published on March 2, 2007, in the *Nacogdoches Daily Sentinel*.

The site proposed for listing is the former Woodward Industries, Inc. site, located on 403 County Road 816, Nacogdoches, Nacogdoches County, Texas. The geographic coordinates of the site are 31 degrees, 43 minutes, 26 seconds north latitude and minus 94 degrees, 40 minutes, 56 seconds west longitude. The description of the site is based on information available at the time the site was evaluated with the Hazard Ranking System. The Hazard Ranking System is the principal screening guide used by the commission to evaluate potential, relative risk to public health and the environment from releases or threatened releases of hazardous substances. The site description may change as additional information is gathered on the sources and extent of contamination.

The seven-acre site is located approximately six miles north of Nacogdoches, south of County Road 816 and Mahl, Texas. Two residential properties are located nearby, one to the east and one west of the site.

Wood treating operations, using pentachlorophenol, were conducted at the site in 1947 until 1982. The ownership of property changed hands several times during this period. In 1992, Woodward Industries sold the property to Texwood, Inc., a pallet rebuilding company. On September 30, 1996, Texwood, Inc. sold the property to B.F. Woodward. Between 1996 and 2004 the property changed owners three times. On April 30, 2004, Don L. and Marsha L. Shoemaker purchased the property.

On August 8 - 9, 2005, soil samples were collected from eight locations. One sample location was designated as the background sample location. Samples were collected from the former wood treating site, a location east of the former wood treating site, and from a private baseball field. The soil samples were collected from various depth intervals from the surface to seven feet in depth.

Sample results showed that copper, lead, mercury, and semi-volatile organic compounds were detected below levels of health concern. Results also showed that pentachlorophenol and dioxin/furans were detected on-site above acceptable levels for residential property. Short term exposure to the measured levels of the pentachlorophenol and dioxin/furans are not expected to be an immediate health concern. However, there is the potential of adverse health effects from long-term exposure to these constituents. Additional sampling is necessary to determine whether the levels of pentachlorophenol and dioxin/furans are found consistently on the residential property.

Access to the site is currently unrestricted and private recreational use appears to be the only current usage of the site.

A public meeting will be held at 7:00 p.m. on April 5, 2007, at the Nacogdoches County Courthouse, Commissioners Court, Suite 170, 101 Main Street, Nacogdoches, Texas 75961. The purpose of this meeting is to obtain additional information regarding the site relative to its eligibility for listing on the state registry, identify additional potentially responsible parties, and obtain public input and information regarding the appropriate use of land on which the site that is the subject of this notice is located. The public meeting is not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m. on April 4, 2007, and should be sent in writing to Alvie L. Nichols, Project Manager, TCEQ, Remediation

Division, MC 136, P. O. Box 13087, Austin, Texas 78711-3087 or facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on April 5, 2007.

A portion of the record for this site, including documents pertinent to the executive director's determination of eligibility, is available for review at the Nacogdoches Public Library, 1112 North Street, Nacogdoches, Texas 75961, (936) 559-2970, during regular business hours. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Information is also available regarding the state Superfund program on the World Wide Web at www.tceq.state.tx.us/remediation/superfund/index.html.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call Ms. Kelly Peavler, TCEQ Community Relations, at (800) 633-9363, extension 1352.

TRD-200700623

Mary Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 20, 2007



Notice of Water Quality Applications

The following notices were issued during the period of February 15, 2007 - February 16, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

C & R WATER SUPPLY, INC. has applied for a major amendment to TPDES Permit No. 13766-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 50,000 gallons per day to a daily average flow not to exceed 83,000 gallons per day. The facility is located 0.5 mile northeast of Lake Conroe Dam and 0.75 mile west of Longmire Road in Montgomery County, Texas.

CHHOTUBHAI THAKORBHAI PATEL has applied for a renewal of TPDES Permit No. 11286-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 1/4 mile north of the intersection of Interstate Highway 20 and State Highway 80, approximately 1 and 1/2 miles west of the intersection of Farm-to-Market Road 1392 and State Highway 80 in Kaufman County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 124 has applied for a renewal of TPDES Permit No. 14134-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located ap-

proximately 16,000 feet southeast of the intersection of Interstate Highway 10 and Buffalo Bayou in Fort Bend County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 58 has applied for a renewal of TPDES Permit No. WQ0014520001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located northeast of the intersection of Corbitt and Katy-Flewellen Road, approximately 3,100 feet south of Crossover and Katy-Flewellen Road in Fort Bend County, Texas.

FORT HANCOCK WATER CONTROL AND IMPROVEMENT DISTRICT has applied for a major amendment to Permit No. WQ0011173001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 33,000 gallons per day to a daily average flow not to exceed 451,000 gallons per day and change disposal method from land disposal to discharge into state waters. The current permit also authorizes the disposal of treated domestic wastewater via evaporation. The facility is located on the north side of and adjacent to State Highway 20, approximately one mile southeast of the City of Fort Hancock in Hudspeeth County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 185 has applied for a renewal of TPDES Permit No. 12124-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 675,000 gallons per day. The facility is located at 5300 Addicks-Satsuma Road, approximately 5.1 miles north of Interstate Highway 10 and approximately 1,600 feet east of State Highway 6 in Harris County, Texas.

CITY OF KENNARD has applied for a renewal of TPDES Permit No. 11474-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located on the southeast side of Kennard on a 27 acre tract, on Elm Creek between Pine Prairie Road and Farm-to-Market Road 357 in Houston County, Texas.

LATEXO INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013780001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,000 gallons per day. The facility is located approximately 1000 feet east of the intersection of U.S. Highway 287 and Farm-to-Market Road 2663 on the south side of Farm-to-Market Road 2663 at Latexo I.S.D., south of the baseball field in Houston County, Texas.

MARY ANN MOORE has applied for a renewal of TPDES Permit No. WQ0011621001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located approximately 3000 feet north of Farm-to-Market Road 2457 and approximately 12 miles northwest of the City of Livingston on the east shore of Lake Livingston in Polk County, Texas.

SEC Energy Products & Services, L.P. has applied for a major amendment to TPDES Permit No. WQ0012443001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 2,400 gallons per day to a daily average flow not to exceed 10,000 gallons per day. The facility is located approximately 250 feet west of Fairbanks-North Houston Road and approximately 0.75 mile north of Taub Road in Harris County, Texas.

CITY OF SULPHUR SPRINGS has applied for a renewal of TPDES Permit No. WQ0010372001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,400,000 gallons per day. The facility is located south of the St. Louis Southwestern Railroad approximately 7,000 feet northeast of the intersection of Interstate Highway 30 and Farm-to-Market Road 1870 in Hopkins County, Texas.

VALERO REFINING-TEXAS, L.P. which operates a petroleum refinery, has applied for a major amendment to TPDES Permit No. WQ0000535000 to authorize an increase in the daily average flow from 2,150,000 gallons per day to 2,880,000 gallons per day and increase the permit limitations at Outfall 001. The current permit authorizes the discharge of boiler blowdown, cooling tower blowdown, treated process wastewater and process area storm water at a daily average flow not to exceed 2,150,000 gallons per day via Outfall 001; post-first flush storm water runoff, steam condensate, fire water, cooling tower overspray, and heat exchanger cooling water backwash on an intermittent and flow variable basis via Outfall 002; uncontaminated storm water runoff, steam condensate, fire water, and hydrostatic test water on an intermittent and flow variable basis via Outfalls 003, 005, 006, and Outfall 007; and non-process area storm water, steam condensate, fire water, cooling tower overspray, heat exchanger cooling water backwash, and hydrostatic test water on an intermittent and flow variable basis via Outfall 008. The facility is located at 9701 Manchester, 0.5 miles east of Loop 610, one-mile north of State Highway 225, and bordered on the north by the Houston Ship Channel, in the City of Houston, Harris County, Texas.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section below, **WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.**

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to CITY OF ANNA to correct the disinfection language from chlorination with a detention time of at least 20 minutes based on peak flow to an Ultraviolet Light (UV) system at Outfall 002. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day at Outfall 001 and 500,000 gallons per day at Outfall 002. The facility is located approximately 4,000 feet west of State Highway 5 and 4,600 feet south of Farm-to-Market Road 455 in Collin County, Texas.

The TCEQ has initiated a minor amendment of the TPDES permit issued to EVADALE WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1, to correct the method of disinfection from chlorination with a detention time of at least 20 minutes based on peak flow to a total residence time in the wastewater treatment system of at least 21 days, based on a daily average flow. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 160,000 gallons per day. The facility is located approximately 1,000 feet west of the intersection of State Highway 105 and Farm-to-Market Road 1131 in Jasper County, Texas.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll-Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200700681

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 21, 2007

Notice of Water Rights Application

Notice issued February 16, 2007.

APPLICATION NO. 12026; Broadway South Development, LC, P.O. Box 1084, Tyler, Texas 75710, Applicant, has applied for a Water Use Permit to construct and maintain a dam and reservoir on an unnamed tributary of West Mud Creek, Neches River Basin for in-place recreation purposes in Smith County. The application and partial fees were received on March 13, 2006, and additional information and fees were received on May 8, 2006, June 14, 2006, August 24, 2006, November 17, 2006, November 26, 2006, and January 10, 2007. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on January 23, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Texas Commission on Environmental Quality (TCEQ), Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200700682

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 21, 2007

Proposal for Decision

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (TCEQ) on February 12, 2007, in the matter of the Executive Director of the TCEQ, Petitioner v. Al Jabour dba Rivers County Villas and RV Park; SOAH Docket No. 582-06-2366; TCEQ Docket No. 2005-1177-PWS-E.

The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Al Jabour dba Rivers County Villas and RV Park on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 North Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200700685

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 21, 2007

Office of the Governor

Request for Grant Applications (RFA) for the Juvenile Accountability Block Grant (JABG) Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting statewide discretionary applications for projects that promote greater accountability in the juvenile justice system for the state fiscal year 2008 grant cycle.

Purpose: The purpose of the JABG Program is to reduce juvenile offending through accountability-based programs focused on the juvenile offender and the juvenile justice system.

Available Funding: Federal funds are authorized under the Omnibus Crime Control and Safe Streets Act of 2002, Public Law 107-273, 42 U.S.C. 3796 et seq. All grants awarded from this fund must comply with the requirements contained therein. As of the date of the issuance of this RFA, the U.S. Congress has not finalized federal appropriations for federal fiscal year 2007. All awards are subject to the availability of appropriated funds and any modifications or additional requirements that may be imposed by law.

Funding Levels: No minimum or maximum funding levels.

Required Match: Grantees must provide matching funds of at least ten percent (10%) of total project expenditures. This requirement must be met through cash contributions.

Standards: Grantees must comply with the standards applicable to this funding source contained in the *Texas Administrative Code*, Title 1, Part 1, Chapter 3. In addition grantees must comply with federal regulations contained in 28 C.F.R. §95.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

- (1) proselytizing or sectarian worship;
- (2) lobbying;
- (3) any portion of the salary of, or any other compensation for, an elected or appointed government official, except in the case of a juvenile court or drug court;
- (4) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;
- (5) vehicles or equipment for government agencies that are for general agency use;
- (6) weapons, ammunition, explosives or military vehicles;
- (7) admission fees or tickets to any amusement park, recreational activity or sporting event;
- (8) promotional gifts;
- (9) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement or social activities in any way;
- (10) membership dues for individuals;
- (11) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (i.e., supplanting);
- (12) fundraising;
- (13) medical services; and
- (14) construction.

Eligible Applicants:

- (1) State agencies;
- (2) Units of local government including crime control and prevention districts; and
- (3) Native American Tribal Governments.

Requirements:

- (1) Projects must address one or more of the following JABG Purpose Areas:
 - (a) Juvenile Drug Courts;
 - (b) Information Sharing;
 - (c) School Safety; and
 - (d) Accountability.
- (2) In addition, all juvenile justice projects must address at least one of the following priorities:
 - (a) Family Stability. Programs or other initiatives designed to strengthen family support systems in an effort to positively impact the lives of youth and divert them from a path of serious, violent, or chronic delinquency.
 - (b) Substance Abuse Early Intervention and Prevention. Programs or other initiatives designed to address the use and abuse of illegal and

other prescription and nonprescription drugs and the use and abuse of alcohol. Programs, research, or other initiatives include control, prevention, and treatment.

(c) Education. Programs or other initiatives designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.

(d) Disproportionate Minority Contact (DMC). Programs or other initiatives designed to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(e) Justice System Impact. Programs or other initiatives designed to impact offender accountability and/or improve the practices, policies, or procedures within the juvenile justice system.

(f) Gang Prevention. Programs or other initiatives designed to address issues related to juvenile gang activity, including prevention and intervention efforts directed at reducing gang-related activities.

(g) Rural Access. Programs or other initiatives designed to provide prevention, intervention, and treatment services located outside a metropolitan area.

(h) Training. Programs or other initiatives designed to offer specialized training for staff working directly with at-risk youth or juvenile offenders that can positively impact the quality of the services, staff turnover rates, and program stability.

Project Period: Grand-funded projects must begin on or after August 1, 2007, and will expire on or before July 31, 2008.

Application Process: Applicants must access CJD's grant management website at <https://cjdonline.governor.state.tx.us> to register and apply for funding.

Preferences: Preference will be given to those applicants that demonstrate cost effective programs focused on proven or promising approaches to services provision.

Closing Date for Receipt of Applications: All applications must be submitted via CJD's grant management website on or before April 15, 2007.

Selection Process: For state discretionary projects, applications are reviewed by CJD staff members or a review group selected by the executive director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost effectiveness.

Contact Person: If additional information is needed, contact Ryan Clinton at ryan.clinton@governor.state.tx.us or (512) 463-1919.

TRD-200700678

Christopher Burnett

General Counsel

Office of the Governor

Filed: February 21, 2007

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Amarillo	Amarillo Heart Group LLP DBA Amarillo Heart Group	L04697	Amarillo	21	01/31/07
Arlington	Cardiology Partners LLP	L05999	Arlington	01	02/06/07
Athens	East Texas Medical Center	L02470	Athens	39	02/14/07
Austin	ARA Imaging	L05862	Austin	16	02/08/07
Austin	ARA Imaging	L05862	Austin	17	02/14/07
Austin	Austin Heart PA	L04623	Austin	43	02/03/07
Austin	Austin Heart PA	L05580	Austin	16	02/13/07
Austin	Austin Radiological Association	L00545	Austin	125	02/09/07
Austin	Daughters of Charity Health Services Austin DBA Seton Healthcare Network	L02896	Austin	93	02/01/07
Austin	Heart Hospital IV LP DBA Heart Hospital of Austin	L05215	Austin	23	02/13/07
Austin	Texas Oncology PA DBA South Austin Cancer Center	L05108	Austin	31	01/31/07
Austin	Thermo Finigan LLC	L01186	Austin	43	02/01/07
Beasley	Hudson Products Corporation	L02370	Beasley	44	02/06/07
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	105	01/31/07
Big Spring	Big Spring Hospital Corporation DBA Scenic Mountain Medical Center	L00763	Big Spring	52	02/07/07
Bryon	Central Texas Heart Center PA	L05960	Bryon	01	02/14/07
Carrollton	Medical Edge Healthcare Group PA DBA Heart First	L05555	Carrollton	12	02/12/07
Channelview	TAPCO International Inc DBA TAPCO Enpro International	L04990	Channelview	22	01/30/07
Dallas	Baylor Radiosurgery Center DBA Baylor University Medical Center	L05842	Dallas	08	02/08/07
Dallas	Medical City Dallas Hospital DBA Medical City	L01976	Dallas	168	02/09/07
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	95	02/12/07
Dallas	Vernon Horn MD & James D Boehr MD	L05508	Dallas	03	02/14/07
Deer Park	Shell Chemical LP	L04933	Deer Park	19	02/14/07
Del Rio	Val Verde Regional Medical Center	L01967	Del Rio	28	02/02/07
Fort Worth	Adventist Health System Sunbelt Healthcare Corporation DBA Huguley Health System	L02920	Fort Worth	30	02/09/07
Fort Worth	Oncology Hematology Consultants PA DBA The Center for Cancer & Blood Disorders	L05919	Fort Worth	07	01/31/07
Fort Worth	Raytel Nuclear Imaging LP	L04659	Fort Worth	13	02/08/07
Galveston	The University of Texas Medical Branch	L01299	Galveston	74	02/06/07
Garland	Garland Cardiac Imaging LP	L05948	Garland	01	01/31/07
Houston	Flange-Tech	L04281	Houston	04	02/01/07
Houston	JF Southwest Heart Clinic	L05963	Houston	01	02/01/07
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	122	02/13/07
Houston	Memorial MRI & Diagnostic LLC DBA Memorial Nuclear Imaging LP	L05997	Houston	02	02/02/07
Houston	Rice University Department of Civil and Environmental Engineering	L04639	Houston	09	02/14/07

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Humble	Northeast Hospital Authority DBA Northeast Medical Center Hospital	L02412	Humble	63	02/07/07
Humble	Memorial Hermann Hospital Systems DBA Memorial Hermann Northeast	L02412	Humble	64	02/09/07
Irving	University of Dallas	L01194	Irving	13	02/14/07
Katy	Memorial Hermann Hospital System DBA Memorial Hermann Katy Hospital	L03052	Katy	49	02/02/07
La Grange	Austin Heart La Grange	L05516	La Grange	18	02/13/07
La Porte	E I Dupont De Nemours & Company	L00314	La Porte	82	02/13/07
Laredo	Laredo Medical Center DBA A R Sanchez & Iris Sanchez Stewart Cancer Center	L05305	Laredo	06	02/14/07
Lewisville	Cardiovascular Specialist PA	L05507	Lewisville	11	02/14/07
Lubbock	University Medical Center	L04719	Lubbock	92	01/31/07
Lubbock	University Medical Center	L04719	Lubbock	93	02/02/07
Marble Falls	Austin Heart PA DBA Austin Heart Clinic Marble Falls	L05505	Marble Falls	16	02/13/07
McAllen	Columbia Rio Grande Regional Hospital	L03288	McAllen	45	02/02/07
Midlothian	Chaparral Steel Midlothian LP	L02015	Midlothian	31	01/30/07
Mission	Mission Hospital	L02802	Mission	36	02/13/07
Nocona	Nocona Hospital District DBA Nocona General Hospital	L04977	Nocona	11	02/12/07
Odessa	Ector County Hospital District DBA Medical Center Hospital	L01223	Odessa	81	02/12/07
Richardson	The University of Texas at Dallas	L02114	Richardson	55	02/12/07
Rio Grande City	Advanced Nuclear Imaging Inc	L05467	Rio Grande City	09	02/07/07
San Antonio	Central Cardiovascular Institute of San Antonio	L04892	San Antonio	16	02/07/07
San Antonio	M M Onitveros MD PA	L05675	San Antonio	04	02/08/07
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	225	02/12/07
San Antonio	San Antonio Nuclear Cardiovascular Services	L05134	San Antonio	12	02/01/07
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	153	02/13/07
San Antonio	SW Diagnostic Center PA DBA Southwest Diagnostic Imaging Center	L03763	San Antonio	09	01/31/07
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	29	02/12/07
Sherman	Sherman Heart Group LLP	L05498	Sherman	06	02/14/07
Stephenville	Stephenville Medical & Surgical Clinic	L05309	Stephenville	08	02/08/07
Sugar Land	Heart & Cardiovascular Association of Houston PA	L05892	Sugar Land	02	02/01/07
Temple	Scott & White Memorial Hospital & Scott Sherwood & Brindley Foundation DBA Scott & White Memorial Hospital	L00331	Temple	77	01/31/07
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	52	02/07/07
Throughout Tx	Troxler Electronic Laboratories	L01296	Arlington	42	01/30/07
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	53	02/01/07
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	54	02/08/07
Throughout Tx	WRB Refining LLC DBA Conocophillips Company	L02480	Borger	48	02/14/07
Throughout Tx	Brazos Valley Inspection Services Inc	L02859	Bryan	53	02/07/07
Throughout Tx	Phoenix Non Destructive Testing Co	L04454	Channelview	50	02/01/07
Throughout Tx	Team Consultants Inc	L04012	Dallas	09	02/01/07
Throughout Tx	Irisndt Inc	L04769	Deer Park	35	02/07/07
Throughout Tx	IES Incorporated	L03694	Denver City	10	02/02/07
Throughout Tx	Jaime Rojas DBA CQC Testing and Engineering	L05802	El Paso	04	02/13/07

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	H & H X-Ray Services Inc	L02516	Flint	59	01/30/07
Throughout Tx	Comprobe Incorporated	L01667	Fort Worth	30	02/02/07
Throughout Tx	Bonded Inspections Inc	L00693	Garland	75	02/01/07
Throughout Tx	H & G Inspection Company Inc DBA Statewide Maintenance Company	L02181	Houston	215	02/08/07
Throughout Tx	Metco	L03018	Houston	167	02/07/07
Throughout Tx	Petrochem Inspection Services Inc	L04460	Houston	76	01/30/07
Throughout Tx	Roxar Inc	L05547	Houston	10	02/06/07
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	131	02/08/07
Throughout Tx	Granite Construction Company	L04923	Lewisville	12	02/05/07
Throughout Tx	Big State X-Ray	L02693	Odessa	59	02/01/07
Throughout Tx	T C Inspection Inc	L05833	Oyster Creek	19	02/05/07
Throughout Tx	T C Inspections Inc	L05833	Oyster Creek	20	02/08/07
Throughout Tx	T C Inspections Inc	L05833	Oyster Creek	21	02/13/07
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	120	02/07/07
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	121	02/12/07
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	17	02/14/07
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	71	01/31/07
Throughout Tx	Amtech Roofing Consultants Inc	L04486	Richardson	08	02/13/07
Throughout Tx	United Surveys Inc	L01570	Rosenberg	23	02/13/07
Throughout Tx	Conocophillips Company Sweeny Complex	L00337	Sweeny	48	02/13/07
Throughout Tx	International Industrial Fab Inc	L04935	Texas City	21	02/01/07
Tyler	Delek Refining LTD	L02289	Tyler	17	01/30/07
Tyler	Stewart Regional Blood Center	L04826	Tyler	10	02/01/07
Tyler	Tyler Cardiovascular Consultants PA CVC	L05242	Tyler	12	02/14/07
Victoria	Citizens Medical Center	L00283	Victoria	77	02/07/07

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Beeville	Christus Spohn Health System Corporation DBA Christus Spohn Hospital Beeville	L04510	Beeville	24	02/02/07
Fairfield	East Texas Medical Center Fairfield	L05195	Fairfield	05	02/12/07
San Antonio	Medical & Radiation Physics Inc	L01417	San Antonio	25	01/31/07

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200700664
Cathy Campbell
General Counsel
Department of State Health Services
Filed: February 21, 2007

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Texas Department of Housing and Community Affairs
Notice of Public Hearing

Multifamily Housing Revenue Bonds (Santora Villas) Series 2007

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Allison Elementary, 515 Vargas Road, Austin, Travis County, Texas 78741, at 6:00 p.m. on March 22, 2007, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Santora Villas, LP, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 192-unit multifamily residential rental development to be located at approximately 1805 Frontier Valley Drive, Travis County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200700626
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 20, 2007



Notice of Public Hearing on Section 8 Program 2007 Annual Plan

Section 511 of Title V of the Quality Housing and Work Responsibility Act of 1998 (P. L. 205-276) requires the Texas Department of Housing and Community Affairs (the Department) to prepare a 2007 Annual Plan covering operations of the Section 8 Program. Title 24, §903.17 of the Code of Federal Regulations requires that the Department conduct a public hearing regarding that plan. The Department will hold a public hearing to receive comments for the development of the Department's 2007 Annual Plan. The hearing will take place at the following time and location:

April 17, 2007

Texas Department of Housing and Community Affairs

221 East 11th Street, Room 116

Austin, Texas 78701

1:30 p.m. - 4:30 p.m.

The proposed 2007 Annual Plan and all supporting documentation are available to the public for viewing at the Department's main office, 221 East 11th Street, Attn: Section 8 Program, Austin, Texas on weekdays during the hours of 8:00 a.m. until 4:30 p.m. The proposed plan will also be available for viewing on the Department's website at www.tdhca.state.tx.us/sec8.htm.

Questions or requests for additional information may be directed to Willie Faye Hurd, Section 8 Program Manager, Community Affairs Division at whurd@tdhca.state.tx.us or by mail at P.O. Box 13941, Austin, Texas 78711-3941, (512) 475-3892. Comments must be received by 5:00 p.m. Tuesday, April 10, 2007.

Persons who intend to appear at the hearing and express their comments are invited to contact Willie Faye Hurd in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their comments in writing to Willie Faye Hurd prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Willie Faye Hurd at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids or services for this hearing should contact Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least 2 days before the scheduled hearing so that appropriate arrangements can be made.

TRD-200700661
Michael G. Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 20, 2007



Texas Department of Insurance

Notice

Pursuant to §981.154 of the Texas Insurance Code, the Board of Directors of the Surplus Lines Stamping Office of Texas (Stamping Office) has recommended to the Commissioner of Insurance that he authorize a decrease in the stamping fee charged by the Stamping Office.

Based upon a review of the Stamping Office's recommendation and other information submitted by the Stamping Office to the Texas Department of Insurance, Texas Department of Insurance staff recommends that the Commissioner of Insurance consider a decrease in the stamping fee rate to 0.06% (0.0006) from its current rate of 0.10% (0.0010). The proposed effective date for the decrease is July 1, 2007. The Stamping Office's recommendation and the Department staff's recommendation are now before the Commissioner of Insurance and are under consideration.

A copy of the Stamping Office recommendation and other information reviewed by the Texas Department of Insurance staff are available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the recommendation and the reviewed information, please contact Sylvia Gutierrez at (512) 463-6327 refer to Reference Number O-0207-01.

Any comments on the requested recommendation must be submitted in writing no later than 5:00 p.m. on March 15, 2007. Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments must be submitted simultaneously to Betty Patterson, Senior Associate Com-

missioner, Financial Program, Texas Department of Insurance, P.O. Box 149104, MC 305-2A, Austin, Texas 78714-9104. Any request for a public hearing on the decrease should be submitted separately and in writing to the Office of the Chief Clerk no later than 5:00 p.m. on March 15, 2007.

TRD-200700676
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: February 21, 2007



Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C-H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

The Guardian Life Insurance Company of America.

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal Division - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of American Alternative Insurance Corporation to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, and a determination that all requirements of law have been met, the Commissioner or his designee may take final action on the applicant's election to be a risk-assuming health benefit plan issuer.

TRD-200700592
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: February 16, 2007



Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application to change the name of HOUSTON TPA, LTD. (using the assumed name HEALTH ADMINISTRATION SERVICES) to HOUSTON TPA, LTD. (using the assumed name TRISURANT), a domestic third party administrator. The home office is IRVING, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200700677
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: February 21, 2007



Texas Lottery Commission

Instant Game Number 828 "Set for Life"

1.0 Name and Style of Game.

A. The name of Instant Game No. 828 is "SET FOR LIFE". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 828 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 828.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, STAR SYMBOL, LIFE SYMBOL, \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200, \$500, \$1,000, \$2,500, and \$5,000/WK.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 828 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
COIN SYMBOL	AUTO
STAR SYMBOL	WINX10
LIFE SYMBOL	WIN
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$

\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$2,500	25 HUND
\$5,000/WK	5TH/WK

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 828 - 1.2E

CODE	PRIZE
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100, \$200, or \$500.

I. High-Tier Prize - A prize of \$1,000, \$2,500, or \$5,000/WK (\$5,000 per week not to exceed \$5,000,000 total).

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (828), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 828-0000001-001.

L. Pack - A pack of "SET FOR LIFE" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket front 001 on the other side.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery

pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SET FOR LIFE" Instant Game No. 828 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SET FOR LIFE" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) play symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a COIN play symbol, the player wins PRIZE shown instantly. If a player reveals a STAR play symbol, the player wins ten (10) times the prize shown. If the player reveals a LIFE play symbol, the player wins \$5,000 per week (not to exceed \$5,000,000 total). No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No four or more like non-winning prize symbols on a ticket.
- C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

E. The STAR (win x 10) play symbol will only appear on intended winning tickets as dictated by the prize structure.

F. The LIFE play symbol will only appear with the \$5,000/WK prize symbol and both symbols will only appear on the two winning tickets as dictated by the prize structure.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 5 and \$5).

I. Top prizes are to be approximately evenly distributed throughout the game.

2.3 Procedure for Claiming Prizes.

A. To claim a "SET FOR LIFE" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, \$200, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100, \$200, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "SET FOR LIFE" Instant Game prize of \$1,000 or \$2,500, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "SET FOR LIFE" top level prize of \$5,000 per week (not to exceed \$5,000,000 total), the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. When claiming a "SET FOR LIFE" Instant Game prize of \$5,000 per week (not to exceed \$5,000,000 total), the claimant must choose one of the following four (4) payment options for receiving the prize:

1. Weekly via direct deposit to the winner's account. With this plan, upon validation of the prize, 52 weekly payments of \$5,000, less any taxes and/or other offsets or mandatory withholdings required by law, will be made each Wednesday up to \$260,000 per year. Additional payment(s) may be made to reach the total maximum payment of

\$5,000,000. *NOTE: The investment is based on 52 weeks per year. Some years may have 53 weeks per year, however, only 52 weeks per year will be paid. On years with 53 weeks, no payment will be made on the last Wednesday in December.

2. Monthly via direct deposit to the winner's account. With this plan, upon validation of the prize, an initial payment of \$21,674 less any taxes and/or other offsets or mandatory withholdings required by law, will be made each year on the first business day of the month of the claim. A payment of \$21,666 less any taxes and/or other offsets or mandatory withholdings required by law, will be made on the first business day for the remaining eleven months of each year for a combined total of up to \$260,000 per year. Monthly payments will be made for a period 231 months with the final payment of \$16,660 less any taxes and/or other offsets or mandatory withholdings required by law, to reach the total maximum payment of \$5,000,000.

3. Quarterly via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$65,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made four times a year on the first business day of the first month of each calendar quarter (January, April, July, October) for a total of \$260,000 per year. Quarterly payments will be made for approximately 19 years for a total of 77 quarters with the final quarterly payment of \$60,000 less any taxes and/or other offsets or mandatory withholdings required by law, to reach the total maximum payment of \$5,000,000.

4. Annually via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$260,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month of the claim. Annual payments will be made for a period of 19 years or a total of 19 annual payments. One additional payment of \$60,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made to reach the total maximum payment of \$5,000,000.

5. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

E. As an alternative method of claiming a "SET FOR LIFE" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, \$200, \$500, \$1,000, or \$2,500, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

F. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Office of the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

G. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "SET FOR LIFE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "SET FOR LIFE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 828. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 828 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	1,447,200	5.56
\$20	603,000	13.33
\$50	140,700	57.14
\$100	107,200	75.00
\$200	17,420	461.54
\$500	2,345	3,428.57
\$1,000	201	40,000.00
\$2,500	134	60,000.00
\$5K/WK/LIFE	2	4,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.47. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 828 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 828, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200700663
Kimberly Kiplin
General Counsel
Texas Lottery Commission
Filed: February 20, 2007



North Central Texas Council of Governments

Request for Proposals to Collect and Analyze Traffic Data on Limited-Access Highways in the Dallas-Fort Worth Metropolitan Area

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firm(s) to collect and analyze traffic data on limited-access highways in the Dallas-Fort Worth Metropolitan Area via low-level aerial photography or other non-intrusive remote sensing data collection techniques. NCTCOG desires to enhance its information system for monitoring transportation system infrastructure and performance as part of the Congestion Management Process. The purpose of this effort is to better understand and measure the effects of traffic congestion in the morning and evening peak

periods. This study will focus on the identification of bottlenecks and the measurement of system performance on the limited-access highway transportation system.

Due Date

Proposals must be received no later than 5 p.m., Central Daylight Time, on Friday, March 30, 2007, to Natalie Bettger, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200700665
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: February 21, 2007

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction and Opportunity for Comment

Land Acquisition - Bastrop County

In a meeting on April 5, 2007, the Texas Parks and Wildlife Commission (the Commission) will consider the acquisition of 36.245 acres adjacent to Bastrop State Park. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Prior to the date of the meeting, public comment may be submitted to Corky Kuhlman, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by E-mail at corky.kuhlmann@tpwd.state.tx.us or in person at time of meeting.

TRD-200700666

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Filed: February 21, 2007

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Notice of Proposed Real Estate Transaction and Opportunity for Comment

Lease Exchange - Cameron, Hidalgo and Starr Counties

In a meeting on April 5, 2007, the Texas Parks and Wildlife Commission (the Commission) will consider the exchange of leases with the United States Fish and Wildlife Service. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Prior to the date of the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by E-mail at ted.hollingsworth@tpwd.state.tx.us or in person at time of meeting.

TRD-200700667

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Filed: February 21, 2007

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Notice of Proposed Real Estate Transaction and Opportunity for Comment

Grant of Access Easements - Bastrop County

In a meeting on April 5, 2007, the Texas Parks and Wildlife Commission (the Commission) will consider granting four access easements through Buescher State Park to M.D. Anderson to improve access to its Smithville Science Park. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Prior to the date of the meeting, public comment may be submitted to Ann Bright, General Counsel, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by E-mail at ann.bright@tpwd.state.tx.us or in person at time of meeting.

TRD-200700668

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Filed: February 21, 2007

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Notice of Proposed Real Estate Transaction and Opportunity for Comment

Land Acquisition - Presidio County

In a meeting on April 5, 2007, the Texas Parks and Wildlife Commission (the Commission) will consider the acquisition of 40 acres adjacent to Big Bend Ranch State Park. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Prior to the date of the meeting, public comment may be submitted to Corky Kuhlman, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by E-mail at corky.kuhlmann@tpwd.state.tx.us or in person at time of meeting.

TRD-200700669

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Filed: February 21, 2007

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Notice of Proposed Real Estate Transaction and Opportunity for Comment

Land Acquisition - Brewster County

In a meeting on April 5, 2007, the Texas Parks and Wildlife Commission (the Commission) will consider the acquisition of approximately 80 acres adjacent to Black Gap Wildlife Management Area. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Prior to the date of the meeting, public comment may be submitted to Corky Kuhlman, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by E-mail at corky.kuhlmann@tpwd.state.tx.us or in person at time of meeting.

TRD-200700670

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Filed: February 21, 2007

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Notice of Proposed Real Estate Transaction and Opportunity for Comment

Acquisition of Property Interests - Tom Green County

In a meeting on April 5, 2007, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of undivided interests in 60 acres at the former San Angelo Fish Hatchery property. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Prior to the date of the meeting, public comment may be submitted to Ann Bright, General Counsel, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by E-mail at ann.bright@tpwd.state.tx.us or in person at time of meeting.

TRD-200700671
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: February 21, 2007



Notice of Proposed Real Estate Transaction and Opportunity for Comment

Land Acquisition - Matagorda County

In a meeting on April 5, 2007, the Texas Parks and Wildlife Commission (the Commission) will consider the acquisition of 12 acres adjacent to the Perry R. Bass Marine Fisheries Research Station. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Prior to the date of the meeting, public comment may be submitted to Corky Kuhlman, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or in person at time of meeting.

TRD-200700672
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: February 21, 2007



Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 12, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Hwy 3 MHP, LLC d/b/a Smart Choice Power for Retail Electric Provider (REP) Certification, Docket Number 33866 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 9, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33866.

TRD-200700524
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 15, 2007



Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 12, 2007, for retail elec-

tric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Sure Electric, LLC for Retail Electric Provider (REP) Certification, Docket Number 33868 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 9, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33868.

TRD-200700525
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 15, 2007



Notice of Decision Not to Award Contract

On January 8, 2007, under Project Number 32907, the Public Utility Commission of Texas (PUCT or Commission) filed with the Secretary of State a Request for Proposals (RFP) to select a vendor to serve as a financial advisor to the Commission. The financial advisor would assist with the preparation of a financing order authorizing the recovery of hurricane reconstruction costs through securitization financing and with the subsequent issuance of hurricane cost recovery bonds. Notice for the issuing of the RFP was published in the *Texas Register* on January 19, 2007 (32 TexReg 271). The RFP was issued pursuant to the PUCT's authority under Title II, Texas Utilities Code, §§39.458 - 39.463.

Upon review of the proposals received, Lane Lanford, Executive Director of the PUCT, has determined not to award a contract.

TRD-200700598
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 16, 2007



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on February 15, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on February 26, 2007.

Docket Title and Number: Application of Windstream Sugar Land, Incorporated for Approval of LRIC Study for Residential Bundles Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33883.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 33883. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-

3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 33883.

TRD-200700628
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 20, 2007



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on February 15, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on February 26, 2007.

Docket Title and Number: Application of Texas Windstream, Incorporated for Approval of LRIC Study for Residential Bundles Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33882.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 33882. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 33882.

TRD-200700629
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 20, 2007



Texas Residential Construction Commission

Notice of Applications for Designation as a "Texas Star Builder"

The commission adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective Sept. 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at www.trcc.state.tx.us.

10 TAC §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC §303.300(i)(2) the commission hereby notices the application(s) for designation as a "Texas Star Builder" of:

Stadler Custom Homes of Austin, L.P., dba Stadler Custom Homes, 12117 FM 2244, Ste. 280, Austin, TX 78738; TRCC builder registration certificate # 24969; and the registered agent is Brent T. Allison.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200700620
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Filed: February 20, 2007



Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm

Or visit www.txdot.gov, click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200700625
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: February 20, 2007



University of North Texas

Notice of Major Consulting Contract Award

Description of Activities Consultant Will Conduct

To assist UNT in cost evaluations of the discount and other processing fees assessed for the payment of student tuition and fees when using Mastercard, Visa, Discover, and American Express for payment of tuition and student fees. The consulting services will include, but not necessarily be limited to, the following: conduct research and analysis on UNT's current processing services for the payment of tuition and fees by credit and debit cards; Cost Evaluation based on sales/payment activity since September 2004; make recommendations for credit and debit card processing service; make recommendations for cost evaluations of the discount and other processing fees assessed for the payment of student tuition and fees; and must be able to implement said strategies to lower fees and monitor merchant processing statements for 2 years and to ensure that such changes are permanent.

Name and Business Address of Consultant:

PE Systems, Inc.
720 N. Argonne Road
Suite F
Spokane Valley, WA 99212-2794

Total Value and Beginning and Ending Dates of Contract:

Value: To be determined/50 % of actual savings to the University if the companies' recommendation is used.

Beginning Date: October 27, 2006

Ending Date: Two years from signing of Addendum "A"

Dates on Which Documents, Films, Recordings, or Reports that Consultant is required to present are due:

Date: After the study of 2 years worth of processing statements (approximately four weeks)

TRD-200700507

Sandy Shelton

Director of Purchasing and Payment Services

University of North Texas

Filed: February 15, 2007

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Yoakum County

Request for Comments and Proposals: Additional Medicaid
Beds

Section 32.0244 of the Texas Human Resources Code permits a County Commissioners' Court of a county with no more than two (2) nursing homes to request that the Texas Department of Aging and Disability Services (TDADS"), formerly known as (f/k/a) Texas Department of Human Services ("TDHS"), contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Yoakum County Commissioners' Court is considering requesting that the TDADS, (f/k/a TDHS) contract for more Medicaid nursing facility beds in Yoakum County. The Commissioners' Court is soliciting comments on whether the request should be made. Further, the Commissioners' Court seeks proposals from persons interested in providing additional Medicaid beds in Yoakum County, including persons providing Medicaid beds in a nursing facility with a high occupancy rate, to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid nursing facility beds.

Comments and proposals should be submitted to Judge Jim Barron, P.O. Box 456, Plains, Texas 79355, Yoakum County Courthouse, Ave. G and Cowboy Way, Plains, Texas before 5:00 P.M. on Wednesday, March 31, 2007.

TRD-200700615

Jim Barron

County Judge

Yoakum County

Filed: February 16, 2007

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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).